No. 78-1143

Supreme Court, U. S.
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In the Supreme Court of the United States

OCTOBER TERM, 1978

CYRUS VANCE, SECRETARY OF STATE, APPELLANT

v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JURISDICTIONAL STATEMENT

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JURISDICTIONAL STATEMENT

OPINIONS BELOW

The opinion of the court of appeals (App. A) is reported at 577 F.2d 7. The decision of the district court (App. C) is not reported. The opinion of the Board of Appellate Review of the Department of State (App. D) is not reported.

JURISDICTION

The judgment of the court of appeals (App. B) was entered on May 26, 1978. A petition for rehear-

ing *en banc* was denied on August 24, 1978 (App. E). The notice of appeal was filed on September 22, 1978 (App. F). On November 10, 1978, Mr. Justice Stevens extended the time for docketing the appeal to and including December 21, 1978. On December 21, 1978, the Chief Justice extended the time for docketing the appeal to and including January 20, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1252.

CONSTITUTIONAL PROVISION AND STATUTE INVOLVED

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

8 U.S.C. 1481(c) provides:

> Whenever the loss of United States nationality is put in issue in any action or proceeding commenced on or after September 26, 1961 under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b) of this section, any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

QUESTION PRESENTED

Whether 8 U.S.C. 1481(c), which provides that in actions to determine the loss of United States nationality the party claiming that such loss has occurred bears the burden of proving such claim by a preponderance of the evidence, and that a person who has performed an act of expatriation is presumed to have done so voluntarily unless the presumption is rebutted by a preponderance of the evidence, is unconstitutional under the Citizenship Clause of the Fourteenth Amendment.

STATEMENT

1. Appellee was born in Maryland on December 13, 1947. His father was a citizen of Mexico and his mother was a citizen of the United States. Appellee was thus both a citizen of Mexico under the law of that country and a citizen of the United States under the Fourteenth Amendment. App. A, *infra*, 2a.

In September 1970, while a student at the Colegio Comercial Ingles in Monterrey, Mexico, appellee signed an application for a Certificate of Mexican Nationality. The application contained the following statement in Spanish:

> I therefore hereby expressly renounce ——— citizenship, as well as any submission, obedience,

> and loyalty to ~~the~~ any foreign government, especially to that of ————, of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the law and authorities of the Mexican Republic.

The blank spaces in the statement were filled in with the words "Estados Unidos" (United States) and "Norteamerica" (North America), respectively. The application was submitted to the Mexican government on November 16, 1970.[1] In April 1971, appellee was issued a Certificate of Mexican Nationality. App. A, *infra*, 3a.

In August 1971, appellee went to the United States Consulate in Monterrey and met with Wesley Parsons, a consular officer. According to Parsons' testimony appellee stated that he wanted "a determination of some kind on his citizenship, that he felt he was both a Mexican and American citizen, but he felt more Mexican than American[,] * * * that he intended to stay in Mexico, and that it was his impression that it was somehow illegal or against the laws of the United States for him to maintain both

[1] Appellee testified that he made the application for a Certificate of Nationality because he had been informed by an official at the Colegio Comercial Ingles that proof of Mexican nationality was a requirement for a diploma (App. A, *infra*, 2a). As the court of appeals noted (*id.* at 2a n.2), there was evidence indicating that there was no such requirement (Tr. 117, D. Ex. 56).

citizenships" (Tr. 172). Parsons explained that dual nationality was not illegal or improper under American law, but warned appellee against obtaining a Certificate of Mexican Nationality (App. A, *infra*, 4a). When appellee stated that he already had one, Parsons replied that he had probably expatriated himself (*ibid.*). Appellee responded first with surprise and then with the request that Parsons notify his draft board that he was no longer an American citizen (App. A, *infra*, 4a-5a). Parsons explained that any loss of citizenship should be authoritatively determined by the State Department, and he provided appellee with the appropriate forms (App. A, *infra*, 5a).[2] The next day, appellee returned to the consulate with a letter he had written to his draft board, stating that he was no longer an American citizen, and asked Parsons to sign and mail it, but Parsons refused to do so (Tr. 189-190).

On November 15, 1971, at the Consulate, appellee submitted certain standard forms in order that a determination of his citizenship status could be made. (App. A, *infra*, 5a-6a). Among other documents, he signed an affidavit of expatriation (D. Ex. 6), swearing that he had declared allegiance to Mexico and that he had done so "with the intention of relinquishing my United States citizenship."[3] On December 5,

[2] Appellee did not indicate during this meeting with Parsons that he had obtained the Certificate of Mexican Nationality involuntarily or mistakenly (Tr. 183-184).

[3] On the other hand, appellee answered "no" to the written question, "Did you intend by this Oath, or affirmation, to

1971, the State Department issued a Certificate of Loss of Nationality (App. A, *infra*, 6a).

After he received the certificate, appellee called Parsons and inquired whether he could regain his American citizenship. Parsons advised him that he could appeal the administrative determination of loss of nationality (Tr. 208). Appellee appealed to the Board of Appellate Review of the Department of State, which affirmed the administrative finding of expatriation and denied appellee's application for a United States passport (App. D, *infra*).

Appellee then brought this action under 8 U.S.C. 1503(a)[4] in the United States District Court for the Northern District of Illinois, seeking a declaration of his United States citizenship. After a non-jury trial, the district court held that the government had proved, by a preponderance of the evidence, that appellee had declared his allegiance to Mexico and thus

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abandon your allegiance to the United States or transfer your allegiance to the foreign state?" In a separate statement, he said: "By taking this oath I did not consider that I was relinquishing my rights as an American citizen." App. A, *infra*, 6a.

[4] 8 U.S.C. 1503(a) provides:

> If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under [the Declaratory Judgment Act] against the head of such department or independent agency for a judgment declaring him to be a national of the United States * * *.

expatriated himself, and that appellee's evidence was insufficient to rebut the presumption of voluntariness contained in 8 U.S.C. 1481(c). App. B, *infra*.

The court of appeals reversed. It stated: "Assuming that the proper standards were applied, we are convinced that the record fully supports the [district] court's findings" (App. A, *infra*, 8a). But the court found it necessary to "evaluate the constitutional appropriateness of section 1481(c)" (*ibid.*). The court reasoned that because Congress can not impose expatriation on a citizen against his will (*Afroyim* v. *Rusk*, 387 U.S. 253 (1967)), "the issue becomes whether Congress nonetheless retains the power to legislate as to the evidentiary standard for voluntariness or whether instead that term must be defined constitutionally" (App. A, *infra*, 9a). It concluded that it would be "inconsistent with the spirit of *Afroyim* to conclude that Congress somehow retains the power to define in the way it has here the conditions under which an individual is said to have relinquished voluntarily that citizenship" (*ibid.*). To "adopt blindly" Congress's declaration in 8 U.S.C. 1481(c) of the burden of proof in loss of nationality cases "would be to grant indirectly to Congress power over an individual's citizenship that *Afroyim* held that it could not exercise directly" (App. A, *infra*, 10a).

The court went on to conclude that the government must prove loss of nationality by "clear, convincing and unequivocal" evidence (App. A, *infra*, 11a).

It found that standard to be required by the Fourteenth Amendment as "the minimum burden of proof that can satisfactorily guarantee that the individual's interest in the retention of his citizenship is protected adequately" (App. A, *infra*, 14a). The court remanded the case to the district court for further proceedings under that standard.

THE QUESTION IS SUBSTANTIAL

The court of appeals has held an Act of Congress unconstitutional. Its decision invalidates the statute that Congress enacted to determine the burden of proof in expatriation cases. The court's holding that the Constitution requires that repudiation of citizenship be proved by clear, unequivocal, and convincing evidence is not required by prior decisions of this Court and nullifies the intent that Congress unequivocally expressed in Section 1481(c).

1. In *Nishikawa* v. *Dulles*, 356 U.S. 129 (1958), an action to determine whether an American citizen had lost his citizenship by an expatriating act, this Court held that "*no* conduct results in expatriation unless the conduct is engaged in voluntarily" and that the burden was on the government to prove the expatriating act "by clear, convincing and unequivocal evidence." *Id.* at 133. The Court further concluded that "the Government [bears] the burden of persuading the trier of fact by clear, convincing and unequivocal evidence that the act showing renunciation of citizenship was voluntarily performed." *Id.* at 135. Had *Nishikawa* been the last word on the subject, the judgment below would be correct.

Three years after *Nishikawa*, however, Congress amended the Immigration and Nationality Act, 8 U.S.C. 1101 *et seq.* (1961), to add what is now 8 U.S.C. 1481(c). That section provides that, in any action in which the loss of United States nationality is at issue, the party claiming that such loss occurred has the burden of proving that loss "by a preponderance of the evidence."[5] Furthermore, with an exception not relevant here,[6] any person who performs an act which the law classifies as an expatriating act "shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily."

Congress enacted Section 1481(c) because, in the words of the House Judiciary Committee when it reported out the bill, "[i]t is * * * difficult * * * to subscribe" to *Nishikawa*, and because "administrative application of *Nishikawa* has led to rulings vitiating outright not only the intent of the statute [providing for expatriation], but doing violence to

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[5] The party claiming that loss of nationality occurred is not invariably the government. See *United States* v. *Matheson*, 532 F.2d 809 (2d Cir.), cert. denied, 429 U.S. 823 (1976).

[6] The exception refers to 8 U.S.C. 1481(b), which provides that a person who commits an expatriating act "shall be conclusively presumed to have done so voluntarily" if the person at the time of the act was a national of the state in which the act was performed and had been physically present in that state for ten years or more immediately prior to the act. Section 1481(b) is not involved in this case.

its very letter * * *." H.R. Rep. No. 1086, 87th Cong., 1st Sess. 40-41 (1969) (citations omitted). The Committee declared that it was "impressed" by the statements of Mr. Justice Harlan, dissenting in *Nishikawa*, that "[o]ne of the prime reasons for imposing the burden of proof on the party claiming involuntariness is that the evidence normally lies in his possession," and that the majority's opinion in *Nishikawa* therefore "can be squared neither with congressional intent nor with proper and well-established rules governing the burden of proof on the issue of duress." *Id.* at 41, quoting 356 U.S. at 144-145 (Harlan, J., dissenting).

The Committee accordingly stated that "[i]n order to forestall further erosion of the statute * * *," the amendment

> sets up rules of evidence under which the burden of proof to establish loss of citizenship by preponderance of the evidence would rest upon the Government. The presumption of voluntariness under the proposed rules of evidence, would be rebuttable—similarly—by preponderance of the evidence, thus leaving undisturbed the body of judicial decisions in which it is held that expatriation shall not occur if involuntariness, duress, or compulsion is established in rebuttal of the Government's contention that expatriation was voluntary.

H.R. Rep. No. 1086, *supra*, at 41.

Congress was able thus to overrule *Nishikawa* because, from all that appears, that decision was not

based on the Constitution. The Court held as it did "[b]ecause the consequences of denationalization are so drastic * * *" and therefore " 'the facts and the law should be construed as far as is reasonably possible in favor of the citizen.' " *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 134, quoting *Schneiderman* v. *United States*, 320 U.S. 118, 122 (1943).[7] The Court in *Nishikawa* noted that the only legislative history on the proper burden of proof under the expatriation provisions of the Immigration and Nationality Act of 1940 (Section 401(c), ch. 876, 54 Stat. 1168, 1169) was the rejection of an amendment that would have established a conclusive presumption of voluntariness in certain situations, and it concluded that "[i]t is altogether consonant with this history to place upon the Government the burden of proving voluntariness." *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 135-136. Nowhere in the *Nishikawa* opinion is there any reference to any provision of the Constitution.[8]

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[7] The Court in *Nishikawa* stated that it was applying, in expatriation cases, the "same principle" that *Schneiderman* had established for actions seeking to revoke citizenship on the ground that it was illegally or fraudulently obtained. *Schneiderman* likewise contained no indication that its rule requiring clear and convincing proof of illegality or fraud was constitutionally based. On the contrary, the Court there began its opinion by stating, "Our concern is with what Congress meant by certain statutes and whether the Government has proved its case under them." *Schneiderman* v. *United States*, 320 U.S. 118, 119-120 (1943).

[8] Mr. Justice Black, with whom Mr. Justice Douglas joined, stated in a separate opinion that, while he concurred in the majority's opinion, he believed that the result was compelled

Eight years after *Nishikawa*, in *Woodby* v. *Immigration and Naturalization Service*, 385 U.S. 276 (1966), this Court held that in a proceeding to deport an alien, the government must establish the facts supporting deportability by "clear, unequivocal, and convincing evidence." *Id.* at 277. But it did so only after ascertaining that there was no statutory provision addressed to the degree of proof necessary in deportation proceedings. *Id.* at 282-284. And the Court observed that the burden of proof was "the kind of question which has traditionally been left to the judiciary to resolve * * *" (*id.* at 284).[9] Like the Court's opinions in *Nishikawa* and *Schneiderman*, *Woodby* made no mention of the Fourteenth Amendment or any other provision of the Constitution.

2. In *Afroyim* v. *Rusk*, 387 U.S. 253 (1967), this Court held that Section 401(e) of the Nationality Act of 1940, which provided that a United States citizen lost his citizenship if he voted in a foreign political election, was an unconstitutional exercise of congressional power.[10] The Court held that nothing

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by the Citizenship Clause of the Fourteenth Amendment; in his view, that Clause established that citizenship could be relinquished only by a voluntary act, and that voluntariness was to be "determined on the facts of each case after a judicial trial in full conformity with the Bill of Rights." *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 139 (Black, J., concurring).

[9] In citing *Nishikawa* for the proposition that the court had required clear, unequivocal, and convincing evidence in expatriation cases, the Court in *Woodby* added: "But see § 349(c) of the Immigration and Nationality Act, 75 Stat. 656 (1961), 8 U.S.C. § 1481(c)." 385 U.S. at 285 n.17.

[10] In so holding, the Court overruled *Perez* v. *Brownell*, 356 U.S. 44 (1958), which had held that Section 401(e) was a

in the Constitution gave Congress "any general power, express or implied, to take away an American citizen's citizenship without his assent." *Afroyim* v. *Rusk*, *supra*, 387 U.S. at 257. And the Court held that such a power would be inconsistent with the Citizenship Clause of the Fourteenth Amendment:

> To uphold Congress' power to take away a man's citizenship because he voted in a foreign election in violation of § 401(e) would be equivalent to holding that Congress has the power to "abridge," "affect," "restrict the effect of," and "take . . . away" citizenship. * * * [T]he Fourteenth Amendment prevents Congress from doing any of these things * * *. [*Id.* at 267.]
>
> * * * * *
>
> We hold that the Fourteenth Amendment was designed to, and does, protect every citizen of this Nation against a congressional forcible destruction of his citizenship, whatever his creed, color, or race. Our holding does no more than to give to this citizen that which is his own, a constitutional right to remain a citizen in a free country unless he voluntarily relinquishes that citizenship. [*Id.* at 268.]

Although the court below relied heavily on *Afroyim*, its conclusion is not compelled by that case. To the contrary, *Afroyim* preserved Congress's authority to do what it has done here.

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valid exercise of Congress's authority under the Necessary and Proper Clause and its implied authority to deal with foreign affairs, and that nothing in the Fourteenth Amendment restricted that authority.

What is essentially at issue is not the voluntariness of appellee's acts. He does not contend that his application for the Certificate of Mexican Nationality or his statements in his application for a Certificate of Loss of Nationality were extracted under duress or against his will. Rather, appellee's claim is that he did not intend by those acts to renounce his American citizenship. In *Afroyim*, the citizen likewise acted voluntarily when he voted in a foreign election. See 387 U.S. at 254. But there was no evidence in that case, and no contention by the government, that Afroyim actually intended to renounce his citizenship. It was the government's contention, relying on Section 401(e) of the Nationality Act of 1940, that whether he intended to or not, Afroyim had automatically expatriated himself by casting his ballot. This Court held that the Constitution permits no involuntary expatriation, and that the Fourteenth Amendment defines a citizenship "which a citizen keeps unless he voluntarily relinquishes it." 387 U.S. at 262. Therefore the Court had no occasion to reach, and did not reach, the questions presented here: the quantum of evidence sufficient to show voluntary relinquishment, and the constitutionality of placing on the citizen the burden of rebutting a presumption of voluntariness.

It is true that the Court's opinion in *Afroyim* was written by Mr. Justice Black, who would have decided *Nishikawa* on constitutional grounds. See note 8, *supra*. But in his concurring opinion in *Nishikawa* he was careful to note, "Of course a citizen

has the right to abandon or renounce his citizenship and Congress can enact measures to regulate and affirm such abjuration." Specifically, he stated that "Congress may provide rules of evidence for * * * trials" in which the question of voluntary relinquishment is at issue. 356 U.S. at 139.

Nothing in *Afroyim* casts doubt on those propositions. Indeed, *Afroyim* quotes with approval a statement of Representative Van Trump of Ohio, who in 1868 introduced a bill to provide, in the Court's words, "merely a means by which the citizen could himself voluntarily renounce citizenship" (387 U.S. at 264). Representative Van Trump stated, "[T]he right and the only power of expatriation * * * belongs and appertains to the citizen and not to the Government * * *." But in the same sentence, in words also quoted with approval in *Afroyim*, Representative Van Trump said, " '[I]t is the evidence of his election to exercise his right, and not the power to control either the election or the right itself, which is the legitimate subject matter of legislation' " (*id.* at 265).

Thus, there is no support for the court of appeals' conclusion that to uphold Section 1481(c) "would be to grant indirectly to Congress power over an individual's citizenship that *Afroyim* held that it could not exercise directly" (App. A, *infra*, 10a). *Afroyim* held that Congress could not denationalize a citizen against his will, and that voting in a foreign election is not an act that in itself establishes voluntary relinquishment of citizenship. In contrast, as Representative Van Trump stated, the provision of

rules of evidence to determine whether the citizen has chosen to exercise his right of relinquishment is "the legitimate subject matter of legislation." Section 1481(c) provides such rules.

3. We submit that the power of Congress to prescribe the standard of proof to determine when expatriation is voluntary is limited, not by the Citizenship Clause of the Fourteenth Amendment, but by the Due Process Clause of the Fifth Amendment. Section 1481(c) fully satisfies the requirements of due process. The statute in no way limits the right of one who has arguably expatriated himself to a full hearing and a judicial determination of his citizenship. It merely sets the burden of proof the court must follow, and its formulation of the burden follows principles of long standing that cannot be considered arbitrary or even unreasonable. Congress adopted the test applied in the majority of noncriminal cases, including cases in which important individual interests are at stake.

Thus, while this Court has stated its belief that a higher standard of proof is preferable in expatriation cases (*Nishikawa, supra*), and in denaturalization and deportation cases as well (*Schneiderman* and *Woodby, supra*), each of those statements was made in the absence of congressional action on the question. Here, Congress has acted.[11]

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[11] As this Court observed in *Lavine* v. *Milne*, 424 U.S. 577, 585 (1976), "[w]here the burden of proof lies on a given issue is, of course, rarely without consequence and frequently may be dispositive to the outcome of the litigation or application," but "[o]utside the criminal law area, where special concerns attend, the locus of the burden of persuasion is normally not an issue of federal constitutional moment."

4. Resolution of the question presented is important to the Department of State, which administers the expatriation provisions of the nationality laws. Since this Court's 1967 decision in *Afroyim* v. *Rusk*, *supra*, the Department of State has made a finding of loss of nationality in 20,050 cases. In 17,061 cases—more than 85 percent of the total—that finding was based on either the citizen's naturalization in a foreign country (8 U.S.C. 1481(a)(1)) or his formal renunciation of nationality before an American diplomatic or consular officer abroad (8 U.S.C. 1481(a)(6)). The Department of State estimates that approximately 40 percent of determinations of loss of nationality, from all sources, are contested.

The decision below will make expatriation extremely difficult to prove in any contested case. For as the facts of this case suggest, the individual's subsequent assertion that he did not intend to renounce his citizenship will often make it most difficult, even given his unequivocal statements to the contrary made at the time of his expatriating act, for the government to sustain the burden of proof imposed by the court below. If the government cannot effectively rely on such contemporaneous statements as proof of intent to renounce, administrative decisions of expatriation will seldom be final.[12]

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[12] Under 8 U.S.C. 1503, an action to determine nationality must be brought within five years of an administrative denial

The Fourteenth Amendment does not require, we submit, that those who renounce their citizenship in a deliberate and formal procedure, whether to avoid its burdens or for any other voluntary reason, should be allowed to reclaim its benefits because the government cannot prove, by clear and convincing evidence, that their present statements of past intention are incorrect.

Lastly, if the decision below is allowed to stand, the finality of thousands of past determinations of loss of nationality will be in doubt. *Afroyim* itself has been held fully retroactive by the only court of appeals to consider the question. *Rocha* v. *Immigration and Naturalization Service*, 450 F.2d 946 (1st Cir. 1971); *United States* v. *Lucienne D'Hotelle*, 558 F.2d 37, 40-42 (1st Cir. 1977). The decision of the court below, reached as it was in reliance on *Afroyim*, could likewise be held retroactive in cases brought by persons wishing to contest past findings of expatriation.

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of any "right or privilege as a national of the United States * * *." But there is no time limit on the initial assertion of such a right or privilege.

CONCLUSION

Probable jurisdiction should be noted.

Respectfully submitted.

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JANUARY 1979

APPENDIX A

IN THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

No. 77-2007

LAURENCE J. TERRAZAS, PLAINTIFF-APPELLANT,

v.

CYRUS VANCE, Secretary of State,
DEFENDANT-APPELLEE.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 75 C 2370—ABRAHAM L. MAROVITZ, *Judge.*

Argued April 13, 1978—Decided May 26, 1978

Before CASTLE, *Senior Circuit Judge*, SWYGERT and SPRECHER, *Circuit Judges.*

SPRECHER, *Circuit Judge.* The issue in this appeal is what standard of proof a district court should apply in deciding whether an individual voluntarily renounced his United States citizenship and thereby expatriated himself under 8 U.S.C. § 1481.

I

Plaintiff was born in Takoma Park, Maryland on December 13, 1947. His father was a citizen of

Mexico and his mother was a citizen of the United States. Plaintiff, therefore, under the Fourteenth Amendment[1] and the laws of Mexico was at birth a citizen of *both* the United States and Mexico.

The events surrounding plaintiff's apparent expatriation transpired in 1970-71 while plaintiff was a student at the Colegio Comercial Ingles in Monterrey, Mexico. Plaintiff claims that he was told by an official of that college that a Certificate of Mexican Nationality was necessary as evidence of his citizenship which in turn was a requirement for graduation.[2] Thus, in September 1970, while plaintiff was in the United States for a Selective Service physical examination for possible induction in the army, his father procured an application for a Certificate which he instructed the plaintiff to sign.

On the application was printed in Spanish the following translated material:

> I therefore hereby expressly renounce ——— citizenship, as well as any submission, obedience, and loyalty to ~~my~~ army foreign government, especially

[1] Under the Fourteenth Amendment, "[a]ll persons born . . . in the United States . . . are citizens of the United States."

[2] There is a factual dispute as to whether plaintiff in fact was required to have a Certificate of Mexican Nationality in order to receive his degree. It appears that legally his Mexican identification card which he had acquired in 1966 would have sufficed. Nonetheless, plaintiff maintains that he was told differently by the College's officials and there is an affidavit in the record from one of those officials that appears to corroborate his statement.

> to that of ———, of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the law and authorities of the Mexican Republic.

Ultimately, the blanks were filled in with the Spanish equivalents of the words "United States" ("Estados Unidos") and "North America" ("Norteamericana"), respectively. Plaintiff, however, maintains that when he signed the application, none of the blanks were filled in and that he had no idea that he was renouncing his United States citizenship.

Plaintiff's application was sent to Mexico City and submitted by a brother of plaintiff's father to the Mexican government on November 16, 1970. On April 13, 1971, plaintiff was issued a Certificate of Mexican Nationality. Plaintiff used the Certificate to apply for a job as an insurance salesman in Mexico and to acquire a Mexican passport in order to return to the United States.[3] Plaintiff also acquired a Mexican social security card and he registered with the Mexican military. Neither of these facts, however, required plaintiff to have a Certificate or to be a Mexican national.

In August 1971, plaintiff went to the United States Consulate in Monterrey, Mexico because he had been

[3] The passport was acquired after the Department of State determined that plaintiff had expatriated himself and it was done at the suggestion of plaintiff's lawyer. Plaintiff has resided in the United States since that time.

told informally by a State Department employee that the Certificate may have affected his United States citizenship. At the Consulate plaintiff met with Wesley Parsons, the Chief of the Passport Citizenship Welfare Protection Whereabouts Unit which dealt with nationality cases. Plaintiff apparently asked Mr. Parsons about the legality of dual citizenship (Tr. at 173). Mr. Parsons explained that there was no legal impediment to dual citizenship, but that plaintiff must be careful not to acquire a Certificate of Mexican Nationality (Tr. at 177). When plaintiff informed Mr. Parsons that he had acquired such a Certificate, Mr. Parsons told him "as far as I am concerned, . . . you have expatriated yourself" (Tr. at 177).[4]

According to Mr. Parsons, plaintiff responded to this news with two distinct reactions. First, he was surprised to learn that he had lost his United States citizenship (Tr. at 262). Second, plaintiff asked Mr. Parsons to provide him with a letter informing his

[4] This legal conclusion was based on Mr. Parsons's experience in from three to five cases dealing with a Certificate of Mexican Nationality. Nonetheless, Mr. Parsons made no effort at the time to learn any facts surrounding the application for or the issuance of plaintiff's Certificate. It appears to us somewhat odd that so little effort was made by an official of the Department of State to protect plaintiff's citizenship.

We should note that there is a dispute as to whether Mr. Parsons told plaintiff that his acquisition of a Certificate of Mexican Nationality constituted an act of treason. Given our disposition of this case, we need not resolve this issue.

draft board in Chicago that he was no longer an American citizen (Tr. at 178).[5]

Mr. Parsons explained to plaintiff that he lacked the authority to make a final determination as to plaintiff's citizenship and that it would be necessary to "document this case" [6] by filing certain forms with the Department of State. To that end Mr. Parsons asked plaintiff to fill out various forms explaining the circumstances surrounding his acquisition of the Certificate of Mexican Nationality.

In November 1971, plaintiff returned to the Consulate with the various necessary documents to be

[5] Plaintiff did submit a letter to Mr. Parsons on August 31, 1971, which informed plaintiff's draft board that he was no longer a United States citizen. Mr. Parsons repeated his statement that he lacked the authority to send such a letter because he was not empowered to make a final determination on plaintiff's citizenship. There was no evidence before the district court as to whether the letter or some other version of it was ever sent to the draft board.

Obviously, the government's view of this case is that plaintiff's actions regarding his Mexican and United States citizenship were motivated by his desire to avoid the draft. Although there was not a great deal of evidence on this question introduced at the trial before the district court, there was sufficient evidence from which such an inference could be drawn. We do note, however, in this regard that Mr. Parsons's assessment was that it did not appear to him that plaintiff "left the United States to evade or avoid military service" (Tr. at 179).

[6] It is not altogether clear that Mr. Parsons's efforts to "document this case" were motivated by plaintiff's concern about the draft. Even without plaintiff's concern, Mr. Parsons still had a duty to submit to the State Department a report on any apparent case of expatriation (Tr. at 164). *See* 8 U.S.C. § 1501.

included in his Application for Registration.[7] On one form, plaintiff responded "no" to the question; "Did you intend by this Oath, or affirmation, to abandon your allegiance to the United States, or transfer your allegiance to the foreign state?" In a separate statement drafted by plaintiff, he acknowledged that he felt "more Mexican than American," but nonetheless said that "[b]y taking this oath I did not consider I was relinquishing my rights as an American citizen. . . ." In a third statement, also drafted by the plaintiff and submitted that same day, plaintiff, contrary to his other two statements, stated that he took the "oath of allegiance" voluntarily and "that it was done with the intention of relinquishing my United States citizenship." Except for this one statement, plaintiff has unswervingly contended in all other documents and testimony that he never intended to relinquish his United States citizenship when in April 1970 he signed the application for the Certificate of Mexican Nationality.

A Certificate of Loss of Nationality was approved by the State Department in December 1971. The day

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[7] It is less than clear whether plaintiff knew at the time he was asked to fill out these documents that he was making in essence an application for a Certificate of Loss of Nationality. It was described to him as a "determination as to whether or not he had expatriated himself" (Tr. at 283).

In filling out these documents, plaintiff was assisted by Mr. Parsons's secretary or assistant, Maria Ibarra. There is some dispute as to whether some of her suggested changes injured plaintiff's chances of retaining his citizenship. Given our disposition of this case, however, we need not resolve that dispute.

after it was mailed to plaintiff he called Mr. Parsons to find out "what he could do to reverse the process. . . . He wanted to regain his American nationality" (Tr. at 208). Mr. Parsons responded, "You have got to talk to the Department of State. Don't talk to me" (Tr. at 208).

Plaintiff did seek reinstatement of his citizenship by taking an appeal from the issuance of the Certificate of Loss of Nationality to the Board of Appellate Review of the Department of State. On April 29, 1975, following a full hearing, that body affirmed the administrative finding of plaintiff's expatriation, and denied plaintiff's application for a United States passport.

Plaintiff instituted this action against the Secretary of State, seeking the issuance of a passport and a declaration of his United States citizenship, pursuant to 8 U.S.C. § 1503(c). After a three-day bench trial, the district court found for the Secretary-defendant and held that the denial of plaintiff's application for a passport by reason of expatriation was proper. Plaintiff appeals that judgment and our jurisdiction derives from 28 U.S.C. § 1291.

II

The district court in its memorandum decision applied the burden of proof standards created in 8 U.S.C. § 1481(c), which require the government to prove that plaintiff has taken an oath, made an affirmation or declared his allegiance to Mexico by a "preponderance of the evidence." If the government satisfies its burden, then the statute presumes that

plaintiff acted voluntarily unless he can prove by a preponderance of the evidence that his actions were involuntary. *See King* v. *Rogers*, 463 F.2d 1188, 1189 (9th Cir. 1972).

The district court in applying those standards to this case found that the government proved that plaintiff had declared his allegiance to Mexico by the preponderance of the evidence. In addition, the court concluded that plaintiff's evidence was insufficient to rebut the presumption of voluntariness. Assuming that the proper standards were applied, we are convinced that the record fully supports the court's findings. Therefore, it is necessary for us to evaluate the constitutional appropriateness of section 1481(c).

In considering the constitutionality of that provision, our analysis must begin with the Supreme Court's opinion in *Afroyim* v. *Rusk*, 387 U.S. 253 (1967). In *Afroyim*, the Court held unconstitutional section 1481(a)(5), which made voting in a political election of a foreign state an expatriating act. In so holding, the Court reasoned that the Fourteenth Amendment protects "every citizen of this nation against a congressional forcible destruction of his citizenship."[8] *Id.* at 268. Therefore, in the Court's

[8] In so holding the Court overruled its previous decision in *Perez* v. *Brownell*, 356 U.S. 44 (1958), in which the Court held that Congress had the power to remove an individual's citizenship based on "its power to regulate foreign affairs." *Id.* at 57.

The Court in *Afroyim* rejected the idea that Congress had some implied power to tamper with an individual's citizenship. Instead, it relied on Chief Justice Warren's dissent in *Perez* in which he concluded that "[u]nder our form of government, as established by the Constitution, the citizenship of the lawfully naturalized and the native-born cannot be taken from them." 356 U.S. at 66.

view every citizen has "a constitutional right to remain a citizen" of this country "unless he *voluntarily* relinquishes that citizenship." *Id.* (emphasis added).[9]

In light of the Court's holding in *Afroyim* that Congress is constitutionally devoid of the power to impose expatriation on a citizen, the issue becomes whether Congress nonetheless retains the power to legislate as to the evidentiary standard for voluntariness or whether instead that term must be defined constitutionally. It seems to us absolutely inconsistent with the spirit of *Afroyim* to conclude that Congress somehow retains the power to define in the way it has here the conditions under which an individual is said to have relinquished voluntarily that citizenship.

In fact, the legislative history surrounding section 1481 demonstrates that Congress recognized that the citizen's ability to retain his citizenship can be very much a function of the standard of proof. Congress lowered the standard to a preponderance of the evi-

[9] The Court's holding in *Afroyim* was reaffirmed recently in *Rogers* v. *Bellei*, 401 U.S. 815 (1971), where the Court held that Congress could regulate the citizenship of an individual born in a foreign country to parents one of whom is an alien, and the other a citizen of the United States. In so holding the Court distinguished *Afroyim* as being based on the Fourteenth Amendment. The *Bellei* Court recognized that in such a case "Congress has no 'power, express or implied, to take away an American citizen's citizenship without his assent.'" 401 U.S. at 835.

dence because it felt that there were individuals who should be expatriated but who were avoiding that result in administrative proceedings where the stricter standard was being applied. H.R. Rep. No. 1086, 8th Cong., 1st Sess., *reprinted in* (1961) U.S. CODE CONG. & AD. NEWS 2950, 2984. It seems to us that to adopt blindly Congress's judgment on the burden of proof as to expatriation would be to grant indirectly to Congress power over an individual's citizenship that *Afroyim* held that it could not exercise directly.[10] We decline to sanction such a result.

The issue, of course, remains as to what standard of proof is constitutionally required. In making that determination it is important to recognize that "[t]he standard of proof is more than an empty semantic exercise; it reflects the value society places" on the specific interest at stake. *Tippett* v. *State of Maryland*, 436 F.2d 1153, 1166 (4th Cir. 1971) (Sobeloff,

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[10] The Court in *Afroyim* quoted Congressman Lowndes's remarks in 1818 made in response to a proposal for the establishment of some means for voluntary expatriation. Those comments seem particularly apt as applied to this case.

> If you pass this bill, . . . you have only one step further to go, and say that such and such acts shall be considered as presumption of the intention of the citizen to expatriate, and thus take from him the privileges of a citizen. . . . [Q]uestions affecting the right of the citizens were questions to be regulated, not by the laws of the General or State Governments, but by Constitutional provisions.

387 U.S. at 260 (quoting 31 Annals of Cong. 1050-51 (1818)).

J., dissenting). Seen from that perspective, we conclude that the government must prove by clear, convincing and unequivocal evidence that plaintiff's renunciation of his United States citizenship was performed voluntarily.

We reach that conclusion for several reasons. First, a clear and convincing evidence standard was the test adopted by the Supreme Court in *Nishikawa* v. *Dulles*, 356 U.S. 129, 133-36 (1958), prior to Congress's amendment of the statute. *See also Berenyi* v. *District Director, INS*, 385 U.S. 630, 636 (1967) (dicta). While it is not clear that the Court derived that standard from the Constitution, it is clear that it was not statutorily mandated. As the Court noted, "there is no discussion of the problem of the burden of proof" in the legislative history of the Act it was considering, 356 U.S. at 135. Thus, regardless of its source, the clear, convincing and unequivocal evidence standard represented the Court's view of the burden of proof that best protected the individual interest in his or her citizenship.[11]

Second, most of the lower court decisions subsequent to *Afroyim* have employed the clear, convincing and unequivocal evidence standard. *See, e.g., United States* v. *Matheson*, 532 F.2d 809, 818 (2d Cir. 1976);

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[11] The Supreme Court in *Berenyi* v. *District Director, INS*, 385 U.S. 630 (1967), a case subsequent to Congress's amendment to the statute, stated in dicta that "[w]hen the Government seeks to strip a person of citizenship already acquired . . . it carries a heavy burden of proving its case by 'clear, unequivocal and convincing evidence.'" *Id.* at 636 (footnotes omitted).

Peter v. *Sec'y of State*, 347 F. Supp. 1035, 1038 (D.D.C. 1972) (three judge court). *But see King* v. *Rogers*, 463 F.2d 1188, 1189 9th Cir. 1972) (no discussion of the issue). In fact, the *Matheson* decision is essentially indistinguishable from this case.[12] There, the Second Circuit refused to hold that an American citizen had relinquished voluntarily her citizenship by taking an oath of allegiance to Mexico. The court held that specific intent to renounce U.S. citizenship proved by clear, convincing and unequivocal evidence was required before the mere taking of an oath of allegiance could result in an individual's expatriation. We find no basis for disagreeing with that conclusion.

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[12] The government attempts to distinguish *Matheson* on the basis that the oath involved in that case did not contain the explicit renunciatory language involved in the oath signed by plaintiff in this case. The problem with this distinction is that plaintiff claims that since there were blanks in the oath he did not know that he was renouncing his United States citizenship. In fact, he consistently has made that claim in all documents and testimony with the exception of the one affidavit. Thus, to the extent that there is a distinction between *Matheson* and this case, it is predicated on a factual question that must be resolved under a standard different from that used by the district court.

We note also that the *Matheson* case involved the government as plaintiff seeking to acquire taxes from a citizen-defendant whose estate claimed that she had expatriated herself and thus was not subject to taxes as a United States cititizen. We do not find the unusual posture of that case to have any bearing on the relevance to this case of that court's analysis of the requirements for expatriation. It would truly be a sad state of affairs if the government's view of an individual's ability to retain his citizenship was based on his potential tax liability to this country.

Finally, we believe that the stricter standard of proof best reflects the paramount importance of the individual's interest in United States citizenship. The court in *Matheson* described that interest as follows:

> An individual denied his or her United States citizenship, even if permitted entry into this country, is denied effective participation in our country's electoral processes . . . which is ordinarily regarded as a fundamental constitutional interest, as well as access to a range of livelihoods and positions opened only to citizens of this ocuntry.

532 F.2d at 815 (citations omitted). Similarly, the court in *Peter* recognized that American citizenship is "perhaps the most precious right known to man today." 347 F. Supp. at 1038.

These are not mere idle expressions of patriotism. Rather, they represent judicial recognition that the benefits to the individual of our democratic society are predicated on citizenship. Seen in this way, it is difficult to imagine a commodity more precious to all individuals born or naturalized in this country. Perhaps Chief Justice Warren expressed the view most eloquently:

> Citizenship *is* man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen.

Perez v. *Brownell*, 356 U.S. at 64.

In searching for a standard of proof to be employed in determining whether an individual has voluntarily relinquished this valuable interest in citizenship, we should be mindful of Justice Harlan's statement that "a standard of proof represents an attempt to instruct the factfinder concerning the degree of confidence our society thinks he should have in the correctness of factual conclusions for a particular type of adjudication." *In re Winship*, 397 U.S. 358, 370 (1970) (Harlan, J., concurring). The Supreme Court itself has made clear society's view on this issue; when citizenship is at stake, we must be particularly cautious to guarantee that ambiguities in the evidence are resolved in favor of citizenship. *See Nishikawa, supra*, 356 U.S. at 136. A clear, convincing and unequivocal evidence standard is the minimum burden of proof that can satisfactorily guarantee that the individual's interest in the retention of his citizenship is protected adequately. *But cf. Nishikawa, supra*, 356 U.S. at 139 (Black & Douglas, JJ., concuring) (requring a full judicial trial prior to expatriation). We therefore conclude that the Fourteenth Amendment requires the government to prove by clear, convincing and unequivocal evidence that plaintiff voluntarily relinquished his United States citizenship.

Since the district court applied an incorrect standard of proof, we must reverse its decision and remand the case back to that court for further proceedings. In remanding this case to the district court, however, we are not necessarily requiring that court to conduct a new trial. We recognize that there already have

been two full evidentiary hearings in this case—one before the court and the other before the Department of State—and that the government's witnesses are probably scattered throughout the world. Thus, a new trial may constitute an undue burden on the government. On the other hand, credibility is a crucial factor in this case, and thus the court as trier of fact may be unable to reach a satisfactory decision based on the testimony contained in a two-year-old transcript. We believe the district court is in the best position to evaluate these countervailing considerations and determine in its discretion whether a new trial or a review of the record based on the new, stricter standard of proof will best serve the ends of justice. *See* 28 U.S.C. § 2106; *Panama Mail Steam-*

ship Co. v. *Vargas*, 281 U.S. 670, 672 (1930). We therefore remand to the district court for further proceedings consistent with this opinion.[13]

REVERSED AND REMANDED

[13] Plaintiff complains about the admission of certain documents into the record by the district court. While we have some difficulty pinpointing plaintiff's assignment of error, we have scrutinized the record and found not the slightest error in the district court's procedure for admitting the large number of exhibits involved at the trial. On remand, therefore, the district court may consider all documents that were admitted in the original trial.

Plaintiff, in a footnote in his brief, mentions that he is appealing from the district court's denial of his motion for leave to appeal in forma pauperis under 28 U.S.C. § 1915. Plaintiff, however, presents no arguments suggesting how the district court abused its discretion, see *Brewster* v. *North American Van Lines, Inc.*, 461 F.2d 649, 651 (7th Cir. 1972), in denying plaintiff's motion. Moreover, nothing in the record casts any doubt on the propriety of the district court's decision. We therefore affirm the order denying plaintiff's motion to appeal in forma pauperis.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT
Chicago, Illinois 60604

May 26, 1978

Before

HON. LATHAM CASTLE, *Senior Circuit Judge*

HON. LUTHER M. SWYGERT, *Circuit Judge*

HON. ROBERT A. SPRECHER, *Circuit Judge*

No. 77-2007

LAURENCE J. TERRAZAS, PLAINTIFF-APPELLANT,

v.

CYRUS VANCE, Secretary of State,
DEFENDANT-APPELLEE.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division

No. 75-C-2370 ABRAHAM L. MAROVITZ, *Judge*

Opinion by Judge Sprecher

This cause came on to be heard on the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the judgment of the said District Court in this cause appealed from be, and the same is hereby, REVERSED, with costs, and REMANDED, in accordance with the opinion of this court filed this date.

APPENDIX C

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

No. 75 C 2370

LAURENCE J. TERRAZAS, PLAINTIFF

vs.

CYRUS VANCE, Secretary of State, DEFENDANT

MEMORANDUM DECISION

I. *Introduction*

Pursuant to § 360(a) of the Immigration and Nationality Act of 1952 ("the Act"), 8 U.S.C. § 1503 (a), plaintiff Laurence J. Terrazas instituted this action against the defendant Secretary of State seeking the issuance of a United States passport. In this action plaintiff challenges the administrative determination reached by the Department of State that plaintiff expatriated himself on August 3, 1971 within the meaning of § 349(a)(2) of the Act, 8 U.S.C. § 1481(a)(2), when he took an oath of allegiance to a foreign state in connection with his application for a Certificate of Mexican Nationality. See, Certificate of Loss of United States Nationality, dated December 21, 1971. (Def. Ex. #5.)

On April 29, 1975, following a full hearing and review of plaintiff's claims, the Board of Appellate Review of the Department of State affirmed the ad-

ministrative finding of plaintiff's expatriation; and based upon those findings, plaintiff's subsequent application for a United States passport was denied.

In accordance with the provisions of § 349(c) of the Act, 8 U.S.C. § 1481(c), a trial of this action was held from February 14-17, 1977. Based upon this Court's evaluation of the evidence presented at trial, and for the reasons more fully set forth below, we find for the defendant, and hold that the denial of plaintiff's application for a United States passport for reasons of expatriation, was proper.

II. *The Secretary's Burden of Proof*

Section 349(c) of the Act, 8 U.S.C. § 1481(c), provides in pertinent part:

> (c) Whenever the loss of United States nationality is put in issue . . . the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b), any person who commits or performs, or has committed or performed, any act of expatriation under the provisions of this or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

From the testimony and documentation presented by the defendant at trial, we hold that the Secretary

has sustained his burden of proof by showing by a preponderance of the evidence that plaintiff made a declaration of allegiance to a foreign state as part of his application for Mexican Nationality; that a Certificate of Mexican Nationality was issued to plaintiff which gave legal effect to plaintiff's declaration of allegiance; and that plaintiff's expatriation was conformed by the issuance of a Certificate of Loss of United States Nationality. (See Tr. 474.)

Plaintiff has admitted that he signed an Application for a Certificate of Mexican Nationality. (Tr. 21, 23, 32; Def. Ex. #8), and that he thereafter received a Certificate of Mexican Nationality (Tr. 44; Def. Ex. #9). The Application for Certificate of Mexican Nationality signed by plaintiff contains an unequivocal oath of allegiance to the State of Mexico, and a renunciation of United States citizenship, (Tr. 38, 40; Def. Ex. #8), and the declarations contained therein are considered to have operative legal effect under Mexican law on the date that the Mexican government approved the Application and issued the Certificate of Mexican Nationality. (Tr. 132; Def. Ex. #55, 55(a), 55(b)). The Certificate of Mexican Nationality issued to plaintiff on April 3, 1971 contains a statement that the applicant had sworn adherence, obedience and submission to the authorities of the State of Mexico, (Tr. 46; Def. Ex. #9), and plaintiff has admitted that he read and understood the Certificate upon receipt. (Tr. 47).

III. *The Voluntariness of Plaintiff's Acts*

At trial, plaintiff sought to rebut the statutory presumption of the voluntariness of his act of expatriation, and to challenge the finding of expatriation itself by asserting that the Mexican declaration did not constitute an oath; that he did not take an oath of allegiance to Mexico; that he did not perform acts contrary to his United States citizenship; that he detrimentally relied upon officers of the United States; and that the section of the law under which his expatriation occurred is unconstitutional. We find plaintiff's arguments unconvincing, and his proffered evidence insufficient.

A.

While it is true that the oath taken by plaintiff in his Application for Certificate of Mexican Nationality ("the Application"), does not include an appeal to God, the absence of such an appeal does not detract from the meaningfulness of the oath.

We note first that from the uncontroverted evidence presented by defendant, Mexican law does not require an appeal to God as part of the operative language of an oath. (Tr. 237; Def. Ex. #29). And while the oath of allegiance, per se, has been abolished in Mexico, the declaration of allegiance contained in the Application and the Certificate serves as the equivalent of an oath under Mexican law.

Second, under § 349(a)(2) of the Act, 8 U.S.C. § 1481(a)(2), it is the form of the substantive statement of allegiance to a foreign state as opposed to

the adjectival description of the statement itself which is determinative and most relevant in deciding matters of expatriation. Thus, under the statute, any meaningful oath, affirmation or declaration which "places the person [making] it in complete subjection to the state to which it is taken," III Hackworth, *Digest of International Law*, 219-220 (1942) may result in expatriation. See also, *Savorgnan* v. *United States*, 338 U.S. 491 (1950).

The particular declaration made by plaintiff in his Application contained not only his declaration of allegiance to Mexico, but also an express renunciation of his United States citizenship as required by the 1949 amendment to the Mexican Nationality and Naturalization Act. See, Def. Ex. #8, 9, 18, 18(a), 29, 54, 54(a), 55(a) and 55(b). As noted by the court in *United States* v. *Matheson*, 400 F. Supp. 1241, 1245 (S.D.N.Y. 1975), aff'd., 532 F.2d 809 (2nd Cir.), *cert. denied*, 45 L.W. 3250 (1976), the declaration of allegiance to a foreign state in conjunction with the renunciatory language of United States citizenship "would leave no room for ambiguity as to the intent of the applicant."

We therefore hold that the declaration and renunciation made by plaintiff in his Application constituted a meaningful oath within the purview of § 349(a)(2) of the Act, 8 U.S.C. § 1481(a)(2).

B.

The overwhelming weight of the evidence presented at trial supports defendant's contention that plaintiff

took an oath of allegiance to Mexico in connection with his Application.

Diplomatic Note #102276 (Def. Ex. 54) confirms that applicants for Mexican citizenship must use printed Application forms which contain an oath of adherence, obedience and submission to Mexico, and renunciation of any other citizenship. Diplomatic Note #104667 (Def. Ex. 34(a); 34(b)) confirms that plaintiff presented a signed Application to the Mexican Ministry dated November 16, 1970, requesting the issuance of a Certificate of Mexican Nationality; that the Application was received on January 9, 1971; and that the Certificate was issued to plaintiff by the Mexican Department of Foreign Affairs on April 3, 1971.

Further, plaintiff's own sworn statements, made subsequent to his execution of the Application, contain admissions by plaintiff that he applied for Mexican citizenship and took an oath of allegiance to Mexico. (See, eg. Def. Ex. 6, 13, 14, 15.)

Finally, the evidence strongly supports defendant's assertions that plaintiff was old enough and sufficiently schooled to understand what he was doing at the time that he signed the Application, and that plaintiff was, in fact, the one who signed the Application and is the individual to whom the Diplomatic Notes refer.

C.

The Fourteenth Amendment states that "All persons born or naturalized in the United States . . . are

citizens of the United States." According to the Supreme Court in *Afroyim* v. *Rusk*, 387 U.S. 253, 268 (1967), this constitutional provision serves to "protect every citizen of this Nation against a congressional forcible destruction of his citizenship." Thus, every citizen has "a constitutional right to remain a citizen unless he [voluntarily] relinquishes that citizenship." Such voluntary relinquishment may be proved by evidence of explicit renunciation; acts inconsistent with United States citizenship; or by affirmative acts manifesting a decision to accept foreign nationality. *King* v. *Rogers*, 463 F.2d 1188 (9th Cir. 1972); *Baker* v. *Rusk*, 296 F. Supp. 1244 (C.D.Calif. 1969). A person of dual nationality will be held to have expatriated himself from the United States when it is shown that he voluntarily committed an act whereby he unequivocally renounced his allegiance to the United States. *Fletes-Mora* v. *Rogers*, 160 F. Supp. 215 (C.D. Calif. 1958).

The evidence presented at trial supports the conclusion that plaintiff acted voluntarily in swearing allegiance to Mexico and renouncing allegiance to the United States. The Application itself which was completed by plaintiff contained the oath and renunciation, and the Certificate affirms that the oath and renunciation were voluntarily made. (Def. Ex. 15, 14(a)). Moreover, the evidence is clear that plaintiff knew he was repudiating allegiance to the United States through his actions. (Tr. 462; Def. Ex. 6;14).

Further, plaintiff's conduct indicated that his abandonment of United States citizenship was voluntary,

and understandingly made. Mr. Parsons testified that when plaintiff first visited the United States Consulate in 1971, he sought a determination of his United States citizenship status so that he could advise the draft board that he was no longer an American citizen. (Tr. 178). The evidence also reveals that at the time of plaintiff's Application he was eligible for induction into the United States military, (Tr. 580), having taken a physical examination on September 14, 1970, (Tr. 76; See also, Def. Ex. #13), and raises serious questions regarding plaintiff's "flouting of obligations inherent in American citizenship." *Jalbuena* v. *Dulles*, 254 F.2d 379 (3rd Cir. 1958).

Finally, the evidence adduced at trial indicates that, *inter alia*, plaintiff "loved Mexico and felt more Mexican than American", (Tr. 172, 269, 270, 349; Def. Ex. 14); that he intended to live permanently in Mexico, (Def. Ex. 14, 15; Tr. 172, 349, 351); that he intended to marry a Mexican woman, (Def. Ex. 15, 21; Tr. 349); that he registered for the Mexican military (Tr. 121, 128-129); that he registered with the Mexican Social Security Board (Def. Ex. 44(a), Tr. 128); and that he represented himself as a Mexican citizen and applied for and received a Mexican passport, (Tr. 125, 149, 150, 575; Def. Ex. #1).

The sum of plaintiff's activities compels the conclusion that his oath of allegiance to Mexico was voluntary, and understandingly made as was his abandonment of United States citizenship. See, *Kennedy*

v. *Mendoza-Martinez*, 372 U.S. 144 (1963); *Nemec* v. *Rogers*, 479 F.2d 920 (D.C. Cir. 1973).

D.

Much of plaintiff's challenge to the Certificate of Loss of United States Nationality issued by the Department of State rests upon his assertion that he was misled by members of the United States Counsular Office with whom he dealt. This Court has heard the testimony of plaintiff as well as that of the Counsular officers and finds that based upon the testimony of record plaintiff's contentions are without merit. The record reflects that plaintiff fully understood the nature of his actions and, in fact, actively sought the issuance of the Certificate of Loss of United States Nationality. (See, eg., Tr. 283, 291, 351, 359, 407; see also, Tr. 263, 308, 311-330, 343, 345, 350).

Further, as noted by defendant, the Certificate of Loss did *not*, by itself, create plaintiff's loss of American citizenship, (Tr. 465-466); rather, it merely reflected the fact that plaintiff had lost his United States citizenship as the result of his voluntary commission of an expatriating act as set forth in the statute. See, § 358 of the Act, 8 U.S.C. § 1501. Thus, plaintiff's claim of subsequent reliance upon Counsular officers cannot be characterized as detrimental, since his expatriation had already occurred.

IV. *Conclusion*

In light of the foregoing, we issue the following findings of fact and conclusions of law:

Findings of Fact

1. Laurence J. Terrazas was born in the United States, and was the son of a Mexican citizen.
2. Laurence J. Terrazas took an oath of allegiance to Mexico in connection with his Application for a Certificate of Mexican Nationality.
3. Laurence J. Terrazas knowingly and understandingly renounced allegiance to the United States in connection with his Application for a Certificate of Mexican Nationality.
4. Mexican law does not require an appeal to God as part of an oath of allegiance.
5. The taking of an oath of allegiance to Mexico and renunciation of a foreign country citizenship is a condition precedent under Mexican law to the issuance of a Certificate of Mexican Nationality.
6. A declaration of allegiance to Mexico has legal effect under Mexican law on the date of the issuance of the Certificate of Mexican Nationality.
7. A certificate of Mexican Nationality was issued to Laurence J. Terrazas on April 3, 1971.
8. Laurence J. Terrazas confirmed his oath of allegiance to Mexico on January 9, 1971.
9. Laurence J. Terrazas' words and conduct show that he knowingly and voluntarily took the Mexican oath of allegiance and renounced allegiance to the United States.

10. A Certificate of Loss of United States citizenship was issued to Laurence J. Terrazas by the Department of State on December 21, 1971.
11. Laurence J. Terrazas actively and voluntarily sought the issuance of a Certificate of Loss of United States citizenship.

Conclusions of Law

1. Laurence J. Terrazas acquired United States citizenship by birth.
2. Laurence J. Terrazas acquired Mexican citizenship by birth.
3. The Application for Certificate of Mexican Nationality contains a meaningful oath of allegiance to a foreign state within the meaning of § 349(a)(2) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1841(a)(2).
4. Defendant has proved by a preponderance of the evidence that Laurence J. Terrazas knowingly, understandingly and voluntarily took an oath of allegiance to Mexico, and concurrently renounced allegiance to the United States.
5. Laurence J. Terrazas voluntarily relinquished United States citizenship pursuant to § 349(a)(2) of the Immigration and Nationality Act of 1952, 8 U.S.C. § 1841(a)(2).
6. 8 U.S.C. § 1841(a)(2) is a valid and constitutional statute.

7. Laurence J. Terrazas is not entitled to the issuance of a United States passport pursuant to 22 U.S.C. § 212.

Judgment will enter in favor of defendant.

ENTER:

/s/ Abraham Lincoln Marovitz
ABRAHAM LINCOLN MAROVITZ
Judge

DATED: August 16, 1977

APPENDIX D

DEPARTMENT OF STATE
BOARD OF APPELLATE REVIEW

April 29, 1975

CASE OF: Laurence J. Terrazas

This case is before the Board on appeal from a holding of the Department of State, dated December 21, 1971, that appellant lost his U.S. citizenship on April 3, 1971, because he made a declaration of allegiance to the Republic of Mexico in connection with an application for a Certificate of Mexican Nationality. Section 349(a)(2) of the Immigration and Nationality Act provides that a national of the United States, whether by birth or naturalization, shall lose his nationality by:

> (2) taking an oath or making an affirmative or other formal declaration of allegiance to a foreign state or a political subdivision thereof; . . .

This provision of law, it will be noted, not only proscribes the taking of an oath to a foreign state but also "making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof." Under Mexican law a declaration of allegiance is accepted and recognized in lieu of an oath of allegiance.

Laurence J. Terrazas was born in the State of Maryland on December 13, 1947, of a United States citizen mother and a Mexican citizen father. He was, therefore, both a citizen of the United States and a citizen of Mexico from the time of birth having derived

Mexican citizenship through his father by virtue of Article 30 of the Constitution of Mexico. He first visited Mexico in 1963 at the age of 15 years. On May 21, 1966, Mr. Terrazas applied for and was granted a Mexican card of identity (Matricula No. 1300) by the Mexican Consul General in Chicago. In a Questionnaire he executed at the U.S. Consulate General in Monterrey on November 15, 1971, Mr. Terrazas explained why he applied for the Identity Card:

> I intended to travel to Mexico for a vacation and did not want to go as a tourist but as a Mexican citizen . . . I had no intentions of staying in Mexico permanently at that time."

Possession of the Mexican Identity Card obviated the necessity of securing a tourist card for entry into Mexico and, at the same time, it also served as proof of his Mexican citizenship. Mr. Terrazas resided in the United States until May 13, 1968, when at the age of 20 years and after attending the University of Illinois for two years, he departed for Mexico and enrolled in the Colegio Comercial Ingles as a student in business administration. He was graduated from this institution in June 1971.

On November 16, 1970, at the age of 22 years, Mr. Terrazas made application for a Certificate of Mexican Nationality. This was confirmed by the Mexican Ministry of Foreign Affairs on December 6, 1973, when our Embassy at Mexico City was furnished a certified copy of Mr. Terrazas's application for a

Certificate of Mexican Nationality. The full text reads as follows:

> I hereby respectfully request that I be issued a certificate of Mexican citizenship, on the basis of the facts confirmed by the attached documents, and in accordance with the legal provisions applicable to the case.
>
> I therefore hereby expressly renounce United States citizenship as well as any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America, of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the laws and authorities of the Mexican Republic.
>
> Under oath to speak the truth, I state that I have no title of nobility to renounce, but supposing that, even without my knowledge, I might have the right to such a title, I hereby formally renounce it, whatever its origin.
>
> I also hereby submit the following data:
> Full name of applicant: Laurence James Terrazas Wootton
>
> Marital status: Single
>
> Domicile: Parroquia 731-302, Colonia Del Valle, Mexico, D.F., Zone 12, Mexico
>
> Place and date of birth: Takoma Park, Montgomery County, Maryland, U.S.A. December 13, 1947.

Father's name and nationality: Carlos Terrazas Navarro. Mexican.

Mother's name and nationality: LaVerne Genevieve Wootton. American.

Mexico, D.F., November 16, 1970

/s/ Laurence James Terrazas Wootton

This document containing the declaration of allegiance to Mexico as well as the renunciation of U.S. citizenship was found acceptable by the Government of Mexico. On April 3, 1971, appellant was issued Certificate of Mexican Nationality No. 1962 by the Ministry of Foreign Affairs of Mexico. It appears from his statements of record that he again made a declaration of allegiance to the State of Mexico upon receipt of this Certificate.

The legal authority for the declaration of allegiance is found in Article 57 of the Mexican Nationality and Naturalization Act of January 5, 1934, as amended. This article reads as follows:

> *Article 57.* With respect to persons whom the law regards as Mexicans, and who are also considered to have a foreign nationality under the laws of another State, the Department of Foreign Affairs shall issue the appropriate certificates of nationality, and, to that end, shall require applicants to make to it the renunciation and to take the oath referred to in Articles 17 and 18 of this Law, and to comply with the other

> requirements set forth in the corresponding Regulations.
>
> The certificates shall constitute full proof of nationality, and their holders must present them in order to exercise rights which the law reserves to Mexicans.

The said Articles 17 and 18 read as follows:

> *Article 17.* Through the intermediary of the judge, the petitioner shall submit to the Ministry of Foreign Affairs a petition in which he shall expressly disclaim his original nationality and all subjection, obedience and allegiance to any foreign government, more particularly to the government of which he has hitherto been a subject; renounce any protection extraneous to the laws and authorities of Mexico and any rights granted to aliens by treaties or by international law; and pledge allegiance, obedience and submission to the laws and authorities of the Republic. These disclaimers and renunciations and this pledge shall be confirmed in the presence of the judge in the case of ordinary naturalization.
>
> Where it appears that the alien, when making the disclaimers and renunciations and giving the pledge referred to in this article, did so with mental reservations, fraudulently, or without the real, definite and permanent intention to remain bound by them, he shall be liable to all the penalties which are now or hereafter will become applicable under this Act or any other enactment.
>
> *Article 18.* If the alien applying for naturalization holds any title of nobility conferred by any

> foreign Government, he must expressly renounce the right to possess or use it.

At the age of 18 years appellant registered for military service with Selective Service Board No. 102 in Chicago. The records of Board No. 102 show that he was classified 2-S (student deferment) during part of his attendance at the school in Mexico, that is, until June 1970. Following the death of his father on November 23, 1970, the draft board granted him a hardship deferment (3-A) for six months beginning on February 25, 1971, and expiring on August 26, 1971. He was reclassified 1-A by his Appeals Board on November 23, 1971, and finally reclassified 1-H as of February 10, 1972, i.e. no longer available for induction except in case of a national emergency. According to his testimony at the hearing on February 7, 1975, appellant underwent and passed a physical for military service in September 1970. It is plainly evident from the record that his liability for military service in the U.S. Armed Forces was a major factor affecting his course of conduct in Mexico.

On August 29, 1971, appellant received a letter from his mother informing him that the hardship deferment had not been extended by Local Board No. 102. Shortly thereafter, early in September 1971, appellant went to the U.S. Consulate General in Monterrey and made inquiry "as to how he could go about renouncing his United States nationality". According to the affidavit of Vice Consul Wesley Parsons, dated August

9, 1972, appellant requested "a formal decision from the Consulate General concerning his citizenship status so he could send a letter to his draft board in Chicago informing them he was no longer a United States citizen". On August 31, 1971, Mr. Terrazas wrote to the Illinois State Director of Selective Service and advised him that "I have tried to fill out all the papers that Mr. Parsons gave me with the whole truth and nothing but the truth. I am no longer considered an American citizen and yet, I am trying to prove that my intentions were not bad." In this same letter appellant stated further: "On April 3, 1971, I was given a Mexican nationality certificate and on this same date in Mexico City, I swore allegiance to Mexico. I did not know that I was at the same time losing my rights as an American citizen." Appellant also executed an affidavit at the U.S. Consulate General on November 15, 1971, wherein he admitted taking an oath of allegiance to Mexico voluntarily and with the intention of relinquishing his United States citizenship. The full text of this affidavit reads as follows:

> I, Laurence James Terrazas, solemnly swear that I acquired United States nationality by virtue of birth at Takoma Park, Maryland on December 13, 1947.
>
> That I took an oath of allegiance to Mexico in connection with a Certificate of Mexican Nationality issued to me on April 3, 1971 at Mexico, D. F., Mexico.

I further swear that the act mentioned above was my free and voluntary act and that no influence, compulsion, force, or duress was exerted upon me by any other person, and that it was done with the intention of relinquishing my United States citizenship.

I have read the foregoing statement in the English language and I understand its contents.

/s/ Laurence James Terrazas

On December 23, 1971, the Department of State approved a certificate of loss of nationality in this case, as recommended by the U.S. Consulate General at Monterrey, Mexico.

As against this factual record, we have appellant's testimony at the hearing held on February 7, 1975, that he signed a "blank piece of paper" in applying for the Mexican Certificate of Nationality, that he was coerced into doing so by his domineering father and because possession of the certificate was necessary to receive a diploma from the school he was then attending in Mexico, that the American Vice Consul at Monterrey accused him of treason and threatened to prevent his return to the United States unless he cooperated in documenting his expatriating act of November 16, 1970, and finally, that his liability for U.S. military service in no way influenced his actions and conduct during the period 1968-1971. It is significant that during the period from September to November 1971, Mr. Terrazas showed no interest in

retaining United States citizenship. In fact, he visited the American Consulate General on his own initiative and requested a definite ruling with regard to his citizenship status. He fully cooperated in documenting the Vice Consul's preliminary finding of expatriation under section 349(a)(2) of the Immigration and Nationality Act. At that time when he was understandably concerned about his draft status, not one word of criticism was uttered against the Vice Consul. Then there was no claim of harrassment, browbeating, deception, threats, or of being accused of treason. These charges were leveled against the Vice Consul only after appellant sought to restore his American citizenship. At the hearing appellant persisted in blaming Vice Consul Parsons for his predicament saying that the Vice Consul accused him of committing treason and threatened to prevent his return to America unless he acknowledged his expatriating act by signing certain documents for submission to the Department. He belatedly sought to attribute these damaging admissions to consular duress and deception whereas, in fact, he was quite ready and willing to renounce his American citizenship in September 1971. Several months subsequent to December 21, 1971, the date on which the Department approved the loss-of-nationality certificate in this case, appellant appeared at the Consulate General in Monterrey to inquire "if he could regain his U.S. nationality." (See Monterrey's Operations Memorandum of July 6, 1972). The record being unclear as to the exact date of this inquiry, we can only

speculate as to what prompted it. Appellant's draft classification was changed from 1-A to 1-H on February 10, 1972.

For the purposes of section 349(a)(2) of the Act, an oath or declaration of allegiance to a foreign state must be meaningful as opposed to a superficial gesture of allegiance having no significance. The Department of State holds that for loss of nationality to result from taking an oath of allegiance to a foreign state, the oath must be one which is prescribed by law or regulations having the force of law and must be taken before a competent official of the foreign government (3 Hackworth, Digest of International Law, 218). In the case of Mexico the legal authority is found in the aforementioned Article 57 of the Mexican Nationality and Naturalization Act, as amended. As to the question of whether or not the declaration of allegiance in Mr. Terrazas's case was made to a competent official of the Mexican Government, we answer in the affirmative. Unlike the oath of allegiance which is taken in the presence of the administering official and which Mexico does not require or recognize, appellant's declaration of allegiance was an integral part of the application he signed on November 16, 1970, with full knowledge that such application would be presented to a competent official of the Mexican Ministry of Foreign Affairs for approval or disapproval. In this context we believe his declaration of allegiance was legally sufficient so far as concerns United States requirements. It was also meaningful in a larger sense. Former Secretary of

State and later Chief Justice of the Supreme Court, Charles Evans Hughes, is quoted as having defined an expatriating oath of allegiance as follows:

> It is the spirit and meaning of the oath, and not merely the letter, which is to determine whether it results in expatriation. It is not a mere matter of words. The test seems to be the question whether the oath taken places the person taking it in complete subjection to the state to which it is taken, at least for the period of the contract, so that it is impossible for him to perform the obligations of citizenship to this country. (3 Hackworth, Digest of International Law, 219-220)

In the case of Mr. Terrazas, we are of the opinion that his declaration of allegiance to Mexico placed him in complete subjection to that country. Although he ascribed his act to the influence of an autocratic father, he was 22 years of age at the time and presumably was capable of exercising independent judgment. Moreover, he freely accepted the certificate of Mexican nationality subsequent to his father's death. It is clearly inferable from the record that appellant's declaration of allegiance to Mexico was motivated, to a substantial degree, by a firm desire to identify himself with the Republic of Mexico. This is reflected in his affidavit of November 15, 1971, wherein he stated:

> In 1970, I decided that I wanted to stay here in Mexico and live here permanently. I have a great affection for this country and its people. This is not hard to understand, since my father

> was a citizen of this country and fought during the Mexican Revolution of 1910-1927. I plan on getting married to a Mexican girl within the year. By becoming a Mexican, it will be easier for me to work here. I hope to be able to better relations between both the United States and Mexico. Since I have blood relations on both sides of the Rio Grande, I believe that it is my duty to better the understanding between each country.

It is considered significant that the Mexican Ministry of Foreign Affairs acted favorably on his application of November 16, 1970, having found no cause to question its genuineness.

As to appellant's testimony that he signed a blank piece of paper on November 16, 1970, that he didn't read the document his father placed before him (TR 64), and that it was written in the Spanish language (TR 96), the U.S. Supreme Court was confronted with similar contentions in *Savorgnan* v. *United States*, 338 U.S. 491 (1950), and disposed of them as follows:

> The petitioner, in the instant case, was a competent adult. She voluntarily and knowingly sought and obtained Italian citizenship. Her application for naturalization and her oath of allegiance were in Italian, which she did not understand, but Savorgnan (petitioner's husband) did understand Italian, and he was with her when she signed them. She knew that the instruments related to her citizenship and that her signature of them was an important condi-

> tion upon which her marriage depended. She thus was as responsible for understanding them as if they had been in English. On that basis, she was married. Whatever the legal consequences of those acts may be, she is bound by them.

When all of these considerations are viewed in their totality, we can only conclude that the expatriating act in question was meaningful in the fullest sense.

Next we reach the question of whether the appellant's declaration of allegiance to Mexico was a voluntary act. It is statutorily presumed to have been performed voluntarily (Section 349(c) of the Act) and the burden is on Mr. Terrazas to prove otherwise. He claims to have signed the application against his will when pressured to do so by his domineering father. This circumstance, if true, did not make his act any the less deliberate or voluntary. As of November 16, 1970, when appellant signed the declaration of allegiance, he had passed the age of legal maturity and must be held bound by the election he made at that time. Based on his testimony at the hearing, he faced a choice between the benefits of a Mexican education and renunciation of his U.S. citizenship, and he chose the former.

In the case of *Jolley* v. *Immigration and Naturalization Service*, 441 F. 2nd 1245 (1971), the petitioner faced a choice between renunciation of his U.S. citizenship and a desire to avoid breaking the Selective Service laws of the United States. He contended that such a choice rendered his formal renunciation of

U.S. citizenship involuntary. The court disagreed for the reasons expressed in the following excerpt:

> While we accept the assertion that Jolley's abhorrence of the Selective Service laws caused him to apostatize himself, he cannot equate that abhorrence with coercion sufficient to render his renunciation involuntary as a matter of law. Dislike for the law does not in and of itself compose coercion; subjective detestation cannot be metamorphosed into duress. Jolley's Hobson's choice, if it be deemed such, was self-generated. The compulsion he felt to renounce his citizenship was of his own design. But opportunity to make a decision based upon personal choice is the essence of voluntariness.

Mr. Terrazas did not face a Hobson's choice as was the case in *Nishikawa v. Dulles*, 356 U.S. 129 (1958), and *In Re Bautista's Petition*, 183 F. Supp. 271 (1960). His expatriating act was not compelled by law. Appellant does not contend that the Mexican certificate of nationality was the only means by which he might have proved his Mexican nationality. He experienced no difficulty obtaining a card of identity from the Mexican Consulate General in Chicago.

We are not persuaded that appellant has overcome the presumption of voluntariness. This conclusion is buttressed by his admission that he freely made a declaration of allegiance to Mexico in Mexico City on April 3, 1971, upon receiving the Certificate of Mexican Nationality, and this occurred several months after his father died. The following quotation is taken from the Questionnaire he completed and signed

under oath at the Consulate General on November 15, 1971:

> Upon receiving this certificate of Mexican nationality I was asked to swear allegiance to Mexico which I did do willingly. Since I had applied for this certificate, I felt it was my duty to swear allegiance. I did this because I believe that a person who asks for such a document has the obligation to swear allegiance to that Country. When they gave me this document I voluntarily took this oath. By taking this oath I did not consider that I was relinquishing my rights as an American citizen as far as the United States Government was concerned; however, I did swear this oath of allegiance willingly and I was not under any pressures or influences (either mental or physical). This was a voluntary act on my part.

Our conclusion of voluntariness is further supported by his affidavit of November 15, 1971, wherein he admitted under oath that he had voluntarily made a declaration of allegiance to Mexico and with the intention of relinquishing his U.S. citizenship. Mr. Terrazas's charges of duress and intimidation against the American Vice Consul at Monterrey have no relevance to the question of whether or not he performed a voluntary act of expatriation on November 16, 1970. The record makes clear that appellant had no contact with the American Consulate General at Monterrey prior to September 1971.

Finally, we take up the question of whether appellant in declaring his allegiance to the Republic of

Mexico had the intention at that time of relinquishing his United States citizenship. An act which does not reasonably manifest an individual's transfer or abandonment of allegiance to the United States cannot be made a basis for expatriation (Attorney General's Statement Interpreting *Afroyim* v. *Rusk*, 387 U.S. 253 (1977)). Voluntary renunciation of citizenship is not confined to a written renunciation as is the case under Sections 349(a)(6) or (7) of the Act. It may also be manifested by other actions declared expatriative under the Act if such actions are in derogation of allegiance to this country (Attorney General's Statement *supra*).

The presence or absence of a subjective intent to abandon citizenship is to be determined by objective standards and circumstances. Here we start with the evidentiary rule that appellant's expatriative act constitutes highly persuasive evidence of a purpose to give up his American citizenship (see Justice Black's concurring opinion in *Nishikawa* v. *Dulles*, 356 U.S. 129). Notwithstanding the persuasive-evidence rule, it is agreed that the overall burden of proving such a purpose devolves upon the Government. We are confronted here by conduct short of a formal renunciation of citizenship before a diplomatic or consular officer of the United States but, nonetheless, a repudiation of all allegiance to the United States and obedience to its laws, certainly in derogation of allegiance to the United States. When appellant performed the expatriative act in question, the evidence of intent to

relinquish United States citizenship is not as strong as it is one year later when Mr. Terrazas faced the reality of induction into the U.S. Armed Forces. In November 1970, he was still a student presumably entitled to a student deferment although his 2-S classification expired in June 1970 and he submitted to and passed the physical examination in September of that year. His hardship deferment was not approved until February 25, 1971. What purpose would have been served by forgoing his American citizenship in November 1970 is not clear, but his subsequent conduct confirmed and is consistent with an intention to relinquish U.S. citizenship. It is axiomatic that the element of intent must coincide with the act of expatriation as should the requisite of voluntariness. All preconditions to expatriation should coexist at the same time and, if not, expatriation does not result. The expatriating conduct, in this instance, occurred on November 16, 1970, and not, as appellant's counsel seems to believe, at the Consulate General in November 1971.

The facts in the case of *King* v. *Rogers*, 463 F. 2d 1188 (1972), are somewhat analogous to those in the instant case. There the Court of Appeals (9th Circuit) reversed the U.S. District Court and held that King lost his U.S. citizenship when, upon becoming a British subject, he took an oath of allegiance to Queen Elizabeth II. This fact, coupled with a purpose to avoid liability for U.S. military service, was sufficient, in the judgment of the Court, to establish

a specific subjective intent to renounce his U.S. citizenship. Unlike the Terrazas case, King had made no explicit renunciation of his American citizenship but expressed a willingness to do so "if this is what will simplify my status." The following is quoted from *King* v. *Rogers*:

> We assume, without deciding, that specific subjective intent to renounce United States citizenship is required for expatriation. The Secretary may prove this subjective intent by evidence of an explicit renunciation, Jolley v. Immigration and Naturalization Service, 441 F. 2d 1245 (5th Cir. 1971); acts inconsistent with United States citizenship, Baker v. Rusk, 296 F. Supp. 1244 (C.D., Cal., 1969); or by "affirmative voluntary act[s] clearly manifesting a decision to accept [foreign] nationality . . . ," In re Balsamo, 306 F. Supp. 1028, 1033 (N.D., Ill. 1969). Such proof need be only by a preponderance of the evidence. 8 U.S.C. § 1481(c).

If Mr. Terrazas, being a dual national, had done no more than make a declaration of allegiance to Mexico, he would have stood on firmer ground in taking this appeal (*Kawakita* v. *U.S.*, 343 U.S. 717; *Jalbuena* v. *Dulles*, 254 F. 2d 379). In *Jalbuena* the appellant in applying for a Philippine passport made a declaration under oath that he would support and defend the Constitution of the Philippines and would bear true faith and allegiance to the same. He was aware at the time that he had become a citizen of the Philippines by operation of law but not aware that he had also retained U.S. citizenship. The Court said:

> . . . restriction upon the reach of the expatriation statute is particularly important in dual citizenship cases which, in their nature, present special difficulties not present where the actor is a citizen of the United States only. The United States recognizes that a person may properly be simultaneously a citizen of this country and of another. Neither status in itself or in its necessary implications is deemed inconsistent with the other. "* * * The concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both. The mere fact that he asserts the rights of one citizenship does not without more mean that he renounces the other. * * * [D]ual citizenship * * * could not exist if the assertion of rights or the assumption of liabilities of one were deemed inconsistent with the maintenance of the other." . . .

In the instant case, in addition to the declaration of allegiance to Mexico, we have an explicit and concurrent renunciation of appellant's U.S. citizenship including all submission, obedience and loyalty to the U.S. as well as a disavowal of all protection foreign to the laws and authorities of Mexico. This latter circumstance is the expatriating conduct which indicates "some flouting of obligations inherent in American citizenship" (*Jalbuena* v. *Dulles*, *supra*). The former Board of Review on Loss of Nationality was confronted with a similar situation (dual nationality) in the case of *George G. Glascock* who also made a declaration of allegiance to Mexico in connection with a passport application (Board's opinion dated

March 30, 1966). The appellant in that case relied, in part, on the decisions in *Jalbuena* and *Kawakita*. The Board considered those cases distinguishable on the facts and so stated in the following language:

> . . . Viewed objectively, the form of appellant's oath, including specific renunciation of his allegiance to the United States, went beyond the mere affirmation of the allegiance he already owed to Mexico in such a way, on its face, as to place appellant in "complete subjection" to Mexico and to make it impossible for him "to perform the obligation of citizenship to this country".

In consideration of the complete record, we view appellant's declaration of allegiance to Mexico and his concurrent repudiation of any and all submission, obedience, and loyalty to the United States as compelling evidence of a specific intent to relinquish his United States citizenship. It would be a contradiction to hold that one who had voluntarily and unequivocally renounced all allegiance and loyalty to his country intended, at the same time, to retain the citizenship of that country. This conclusion is reinforced by Mr. Terrazas's affidavit of November 15, 1971, wherein he admitted under oath that his declaration of allegiance to Mexico "was my free and voluntary act and that no influence, compulsion, force, or duress was exerted upon me by any other person, and that it was done with the intention of relinquishing my U.S. citizenship."

Accordingly, we conclude that the Department's prior administrative holding in this case must be affirmed.

/s/ James J. Hines, Member
JAMES J. HINES, Member

/s/ Alan W. Ford
ALAN W. FORD, Member

Dissenting Opinion

The sole issue that gives me pause is whether, in light of the rationale of *Jalbuena* v. *Dulles*, 254 F.2d 379 (1958), appellant's declaration of allegiance to Mexico falls within the purview of section 349(a)(2) of the Immigration and Nationality Act (hereafter referred to as "the Act").[1] If it were not for the doubts that I have on this point of law, I would agree with the result reached in the above majority opinion.

I

The appellant was born at Takoma Park, Maryland on December 13, 1947. His father was a Mexican citizen and his mother was a United States citizen.

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[1] Section 349(a)(2) of the Immigration and Nationality Act (8 U.S.C. 1481) reads:

> Sec. 349. From and after the effective date of this Act a person who is a national of the United States whether by birth or naturalization, shall lose his nationality by—
>
> . . . .
>
> (2) taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof; . . .

Appellant was from birth a dual national, being a citizen of the United States under our laws and a citizen of Mexico under the laws of that country.[2] He resided with his parents in the United States until May 1968. Thereafter, he resided in Mexico, and attended the Colegio Comercial Ingles, a business school, in Monterrey until he graduated in June 1971.

In 1970, appellant applied for a certificate of Mexican nationality. The application was made on a prescribed form in Spanish addressed to the Mexican Department of Foreign Affairs and was dated November 16, 1970. As part of the application, appellant subscribed to the following declaration:

> I therefore hereby expressly renounce United States citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America, of which I might have been subject, all protection foreign to the laws and authorities of

[2] Article 30 of the Constitution of Mexico of February 5, 1917, as amended by Decree of January 18, 1934 reads in part:

> *Article 30.* Mexican nationality is acquired by birth or naturalization.
>
> (A) The following persons are Mexican nationals by birth:
>
> (I) Persons born within the territorial limits of the Republic, irrespective of the nationality of their parents;
> (II) Persons born in foreign countries of Mexican parents; of a Mexican father and alien mother; of a Mexican mother and unknown father; and . . .

United Nations Legislative Series, ST/LEG/SER. B/4, *Laws Concerning Nationality*, 307 (1954).

> Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the laws and authorities of the Mexican Republic.[3]

On April 3, 1971, the Mexican Department of Foreign Affairs issued appellant Certificate of Mexican Nationality No. 1962. It read:

> I, the Under Secretary of Foreign Affairs, certify: That Laurence James Terrazas Wootton is Mexican by birth under the terms of Article 30(A)(II) of the Political Constitution of the United Mexican States, inasmuch as he has proved that he was born on December 13, 1947, in Takoma Park, Montgomery County, U.S.A., to a Mexican father. He has furthermore sworn adherence, obedience, and submission to the laws and authorities of the United Mexican States, and has expressly renounced all rights inherent to any other nationality, as well as all submission, obedience, and loyalty to any foreign government, especially to those which have recognized him as that national.[4]

In September 1971, appellant visited the Consulate General at Monterrey to clarify his citizenship status. On that occasion, he informed the American Vice Consul of the certificate of Mexican nationality that was issued to him on April 3, 1971, and of his desire to have a final determination made of his United

[3] English translation, Division of Language Services, Department of State, LS No. 39937-B.

[4] English translation, Division of Language Services, Department of State, LS No. 39938-A.

States citizenship status. Subsequently, appellant was given the opportunity to state fully all the facts, circumstances, and motives surrounding the acquisition of his certificate of Mexican nationality. In that connection he executed under oath on November 15, 1971, an affidavit, a citizenship questionnaire, and an application for registration as an American citizen. Appellant also executed under oath on November 15, 1971, a letter addressed "To whom it may concern" relating to his acquisition of the Mexican certificate of nationality.

On December 7, 1971, the Consulate General prepared a certificate of loss of nationality of the United States in the name of appellant, as required by section 358 of the Act.[5] It recited that appellant expatriated himself "on April 3, 1971" under section 349(a)(2) of the Act by taking "an oath of allegiance to Mexico" in connection with his application for a certificate of Mexican nationality. The Department of State (Passport Office) on December 21, 1971, approved the certificate of loss of nationality. Thereafter, appellant filed an administrative appeal with the Board of Appellate Review of the Department of State.

[5] Section 358 of the Immigration and Nationality Act (8 U.S.C. 1501) reads:

> Sec. 358. Whenever a diplomatic or consular officer of the United States has reason to believe that a person while in a foreign state has lost his United States nationality under any provision of chapter 3 of this title, or under any provision of chapter IV of the Nationality Act of 1940, as amended, he shall certify the facts upon which such belief is based to the Department of State, in writing, under regulations prescribed by the Secretary of State. If the report of the diplomatic or consular officer is approved by the Secretary of State, a copy of the certificate shall be forwarded to the Attorney General, for his information, and the diplomatic or consular office in which the report was made shall be directed to forward a copy of the certificate to the person to whom it relates.

As the majority opinion indicates, there are inconsistencies in the record relating to appellant's declaration of allegiance to Mexico. In a letter to the Illinois State Director of the Selective Service Board of August 31, 1971, appellant stated that he "swore allegiance to Mexico" on April 3, 1971, when he was given a "Mexican Naturalization Certificate". In an affidavit of November 15, 1971, appellant also swore that he took an oath of allegiance to Mexico in connection with a certificate of Mexican nationality that was issued on April 3, 1971, and that it was done with the intention of relinquishing his United States citizenship. In a questionnaire, however, dated November 15, 1971, also under oath, he averred that he voluntarily swore allegiance to Mexico, but did not consider that he was relinquishing his rights as an American citizen. And, at the hearing before the Board on February 7, 1975, appellant testified under oath that in September 1970, he signed, without reading, an application "in blank" for a certificate of Mexican nationality (TR. 64),[6] that he needed proof

[6] "TR. 64" refers to the transcript of the proceedings before the Board of Appellate Review, February 7, 1975, at page 64 thereof.

of his Mexican citizenship to get a diploma (TR. 66), that he never went to Mexico City to swear allegiance to Mexico (TR. 73), and that he never took an oath of allegiance when he received his certificate of Mexican nationality (TR. 74). It is undisputed, however, that appellant subscribed to a declaration of allegiance to Mexico in his application for a certificate of Mexican nationality dated November 16, 1970.

The record also shows that appellant's counsel at times misapprehended the nature of the expatriative act attributed to appellant. This, in my opinion, further confused the record. In counsel's letter of June 26, 1972, for example, he stated that "it was only the Department of State that advised him (appellant) that he needed a Certificate of Mexican Nationality and he acted upon their advice that he was committing a crime by not renouncing his American Citizenship". This is not borne out by the facts. In his letter of February 8, 1974, appellant's counsel further stated that but "for the bad advice received from the United States Department of State, he (appellant) would not have the claim of the State Department, that he lost his American citizenship, to defend." Furthermore, at the hearing held on February 7, 1975, counsel for the appellant apparently still considered the consular officer at Monterrey as the "perpetrator" of appellant's loss of citizenship by documenting and obtaining documents from appellant about his expatriative act for the Department's consideration, and also by failing to investigate appellant's background before preparing a certificate of

loss of nationality (TR. 56-59). The act of expatriation in issue, however, is appellant's declaration of allegiance to Mexico, which he had subscribed to in his application of November 16, 1970, for a certificate of Mexican nationality. It is not the conduct of the appellant or the consular officer, approximately a year later, in discussing and documenting the facts, circumstances, and motives relating to appellant's act of expatriation.

II

Appellant was a dual national of the United States and Mexico. As the U.S. Court of Appeals (3rd Circuit) stated in *Jalbuena* v. *Dulles*, 254 F.2d 379, 381 (1958), "dual citizenship cases . . . in their nature, present special difficulties not present where the actor is a citizen of the United States only". The Supreme Court in *Kawakita* v. *United States*, 343 U.S. 717, 723 (1952), had earlier pointed out that "the concept of dual citizenship recognizes that a person may have and exercise rights of nationality in two countries and be subject to the responsibilities of both"; and the "mere fact that he asserts the rights of one citizenship does not without more mean that he reduces the other."

In *Kawakita*, the Supreme Court refused to rule as a matter of law that various wartime acts of the defendant constituted anything more than a declaration of his existing Japanese nationality. Although the defendant registered in the Koseki (a family census register) as a Japanese citizen, obtained work at a

prisoner-of-war camp, traveled to China on a Japanese passport, accepted labor draft papers from the Japanese Government, "faced the east each morning and paid his respects to the Emperor", made statements against the United States, and taunted American prisoners of war, the Court held that the evidence was sufficient to support the finding of the jury that Kawakita had not renounced or lost his United States citizenship at the time he committed the above acts.

With respect to defendant's registration in the Koseki as a Japanese citizen, the Court stated that it could not say "as a matter of law that it was a renunciation of petitioner's American citizenship". The Court said that petitioner's registration in the Koseki "might reasonably be taken to mean no more than an assertion of some of the rights which his dual citizenship bestowed on him". The Court indicated that "in other settings" it might be the equivalent of naturalization within the meaning of section 401(a) of the Nationality Act of 1940, or a declaration of allegiance to Japan within section 401(b) of that Act. But, the Court did not suggest what "other settings" would warrant a conclusion differing from the *Kawakita* decision.

The Court of Appeals in Jalbuena relied on the *Kawakita* decision. It held that a dual national did not expatriate himself by taking an oath of allegiance to a foreign state of which he was a citizen. Jalbuena, a native-born citizen of the United States and a citizen of the Philippines by operation of law, did not lose nationality of the United States under section

401(b) of the Nationality Act of 1940 by taking an oath of allegiance to the Commonwealth of the Philippines in connection with an application for a Philippines passport. The Court stated that "the form of oath he was required to execute as part of his passport application declared no more than his undertaking 'to support and defend the Constitution of the Philippine Islands' and his 'allegiance' to that fundamental law."

Since Jalbuena was already a Philippine citizen when he took the oath, he had merely exercised a routine privilege of his Philippine nationality, and had done nothing in derogation of his allegiance to the United States. As a basis for invalidating the oath taken by Jalbuena, the Court said:

> Certainly this citizen of the Philippines, residing in that country, was bound loyally to support and defend the fundamental law of that land just as he would be bound in this country to support and defend our Constitution. Despite each obligation he may remain a citizen of the other country. Hence, merely to acknowledge and declare the Philippine obligation in a Philippine passport application cannot reasonably have significance in derogation or renunciation of birthright American citizenship.

The Court further said that—

> . . . conduct merely declaratory of what one national aspect of dual citizenship necessarily connotes, cannot reasonably be construed as an act of renunciation of the other national aspect of the actor's dual status.

It found support for this rule in the Supreme Court's statement in *Kawakita* that the mere fact that a dual national "asserts the rights of one citizenship does not without more mean that he renounces the other."

In the instant case, the rationale of *Jalbuena* would seem to raise some doubt as to whether appellant's declaration of allegiance to Mexico resulted in his expatriation under section 349(a)(2) of the Act. It is inconclusive whether appellant's express statement of adherence, obedience, and submission to the laws and authorities of the Republic of Mexico, standing alone, could properly be held to result in the loss of his United States citizenship. It could very well be argued and sustained that appellant's declaration of allegiance did not go beyond the affirmation of allegiance that he already owed to Mexico as a citizen of Mexico. Although the *Jalbuena* decision related specifically to an oath taken in connection with a foreign passport application, the rationale of the Court of Appeals in *Jalbuena* suggests that a dual national could only be held expatriated by taking an oath of allegiance to a state of which he was a national in circumstances where the allegedly expatriating conduct indicates "some flouting of obligations inherent in American citizenship".

With respect to appellant's statement of renunciation of United States citizenship appearing in his declaration, it should be noted that the statement clearly does not fall within any of the enumerated

statutory acts of expatriation. Section 349(a)(6) of the Act, which provides for a formal renunciation of nationality, requires that the renunciation be made "before a diplomatic or consular officer of the United States in a foreign state, in such form as may be prescribed by the Secretary of State . . .". Accordingly, there is even some doubt whether the specific renunciatory language appearing in appellant's declaration to which he subscribed has any legal effect. The Court in *In Re Bautista's Petition*, 183 F. Supp. 271 (1960), considered that a citizen's certificate of renunciation of her United States citizenship, taken before a notary public in the Philippines, "was a nullity" as it was not renounced before a diplomatic or consular officer of the United States in a foreign state as required by statute.

In view of doubts as to the correct interpretation of section 349(a)(2) of the Act in light of *Kawakita* and *Jalbuena* in the circumstances of this case, I am constrained on this narrow ground to dissent from the majority decision. The Supreme Court has emphasized that, where deprivation of the "precious right of citizenship" is involved, "the facts and the law should be construed so far as is reasonably possible in favor of the citizen." *Nishikawa* v. *Dulles*, 356 U.S. 129, 134 (1958); *Schneiderman* v. *United States*, 320 U.S. 118, 122 (1943).

/s/ Edward G. Misey
EDWARD G. MISEY, Chairman

APPENDIX E

[IN THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT]

August 24, 1978

Before

HON. LATHAM CASTLE, Senior Circuit Judge
HON. LUTHER M. SWYGERT, Circuit Judge
HON. ROBERT A. SPRECHER, Circuit Judge

No. 77-2007

LAURENCE J. TERRAZAS, PLAINTIFF-APPELLANT

vs.

CYRUS VANCE, SECRETARY OF STATE,
DEFENDANT-APPELLEE

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.

No. 75 C 2370—ABRAHAM L. MAROVITZ, *Judge*

On consideration of the petition for rehearing and suggestion for rehearing *en banc* filed in the above-entitled cause by defendant-appellee Cyrus Vance, Secretary of State, no judge in active service has requested a vote thereon, and all of the judges on the original panel have voted to deny a rehearing. Accordingly,

IT IS ORDERED that the aforesaid petition for rehearing and suggestion that said petition be reheard *en banc* be, and the same is hereby, DENIED.

Circuit Judge Harlington Wood, Jr. did not participate in the *en banc* consideration of this matter.

APPENDIX F

IN THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

No. 77-2207

[U.S.C.A.—7th Circuit—Received in Clerk's Office Sept. 22, 1978—Thomas F. Strubbe, Clerk]

LAURENCE J. TERRAZAS, PLAINTIFF-APPELLANT

v.

CYRUS VANCE, SECRETARY OF STATE,
DEFENDANT-APPELLEE

NOTICE OF APPEAL TO THE
SUPREME COURT OF THE UNITED STATES

Notice is hereby given that CYRUS VANCE, Secretary of State, by his attorney, THOMAS P. SULLIVAN, United States Attorney for the Northern District of Illinois, hereby appeals to the Supreme Court of the United States from the final judgment holding 8 U.S.C. § 1481(c) unconstitutional, entered in this action on August 24, 1978, when the United States Court of Appeals for the Seventh Circuit denied defendant-appellee's petition for rehearing and suggestion for rehearing en banc.

This appeal is taken pursuant to 28 U.S.C. § 1252, and § 2101(a).

THOMAS P. SULLIVAN
United States Attorney

Notice should be served upon:

Kenneth K. Ditkowsky, Esq.
Ditkowsky and Contorer
2626 W. Touhy Avenue
Chicago, Illinois 60645
MLSiegel:js

353-1877
09/19/78

☆ U. S. GOVERNMENT PRINTING OFFICE: 1978 283573 244

Supreme Court, U. S.
FILED
JUL 11 1979
MICHAEL RODAK, JR., CLERK

APPENDIX TO APPELLANT'S BRIEF

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1143

CYRUS VANCE, SECRETARY OF STATE, APPELLANT

v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

JURISDICTIONAL STATEMENT DOCKETED JANUARY 20, 1979
PROBABLE JURISDICTION NOTED MARCH 26, 1979

In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1143

CYRUS VANCE, SECRETARY OF STATE, APPELLANT

v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT
OF APPEALS FOR THE SEVENTH CIRCUIT

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RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1975	
July 17	File complaint and three copies.
	* * * * *
Oct. 16	Filed defendant's answer.
	* * * * *
1976	
Jan. 15	Filed certified record from Department of State, Operations Branch, Administrative Division, Passport office.
	* * * * *
June 21	Filed deposition of Laverne Terrazas in 2 volumes.
June 23	Filed deposition of Wyatt B. Johson in 1 volume.
July 6	Filed Plaintiff's petition to require production of Wesley Parsons for discovery deposition, and to require detailed answers to interrogatories previously served, and other relief.
	* * * * *
Nov. 30	Filed plaintiff's motion to strike defendant's answer to complaint and for judgment based upon the fifth and fourteenth amendment; attachment.
Nov. 30	Filed plaintiff's objections to government's motion to strike plaintiff's petitioner.
Nov. 30	Filed plaintiff's motion to require production of documents, tape recordings, statements and all investigative records concerning plaintiff.
Nov. 30	Filed plaintiff's alternative motion for protective order.

DATE	PROCEEDINGS
1976	
Dec. 2	Enter order dated 11-30-76: Status report held. Plaintiff's motion for summary judgment is denied. Plaintiff's motion to strike defendant's answer to the complaint is denied. Defendant's motion to strike the plaintiff's motion for summary judgment is denied. Plaintiff's motions for production of documents and for protective order are continued until after the final pretrial order has been filed. Final pretrial order to be submitted on December 14, 1976 at 10:00 A.M.—Marovitz, J. Mailed notices 12-2-76
	* * * * *
1977	
Feb. 16	Enter order dated 2-14-77: Cause called for trial. Opening statements heard and concluded. Evidence heard in part for defendant. Trial adjourned until February 15, 1977 at 10:00 A.M.—Marovitz, J. Mailed notices 2-16-77
Feb. 16	Enter order dated 2-15-77: Trial resumed evidence heard in part for defendant. Trial adjourned until February 16, 1977 at 10:15 A.M.—Mailed notices 2-16-77
Feb. 16	Filed plaintiff's motion for a finding in favor of plaintiff at the close of defendant's evidence.
Feb. 17	Enter order dated 2-16-77: Plaintiff's motion for a finding in favor of plaintiff at the close of defendant's evidence is denied. Marovitz, J. Mailed notices 2-17-77
Feb. 17	Enter order dated 2-16-77: Trial resumed evidence heard and concluded for defendant. Evidence heard in part for plaintiff. Trial adjourned until February 17, 1977 at 8:45 A.M.—Marovitz, J. Mailed notices 2-17-77

DATE	PROCEEDINGS
1977	
Feb. 17	Enter order dated 2-17-77: Trial resumed evidence heard and concluded for plaintiff. Trial briefs conclusion of law and finding of facts to be filed by March 18, 1977. Cause continued for ruling on trial briefs to April 28, 1977 at 10:00 A.M.—Marovitz, J. Mailed notices 2-17-77
	* * * * *
March 18	Enter order dated 3-18-77: Plaintiff's motion to file brief in excess of 28 pages is granted.—Marovitz, J. Mailed notices 3-18-77
	* * * * *
March 29	Filed plaintiff's motion to strike documents and exhibits of the defendant; attachment.
March 30	Enter order dated 3-29-77: Government's motions for leave to file post trial briefs and to file brief in excess of 15 pages is granted. Government's motion to strike certain of plaintiff's exhibits and plaintiff's motion to strike documents and all of defendant's exhibits are continued to April 28, 1977 at 10:00 A.M.—Marovitz, J. Mailed notices 3-30-77
	* * * * *
April 21	Filed Government's motion for leave to file its post trial memoranda, instanter.
	* * * * *
May 2	Filed plaintiff's reply to defendant's brief.
	* * * * *
Aug. 24	Enter order dated August 16, 1977: Enter judgment in favor of defendant. Laurence J. Terrazas is not entitled to the issuance of a United States passport pursuant to 22 U.S.C. § 212 (DRAFT). Marovitz J. JS-6 Notices mailed 8-24-77
	* * * * *

DATE	PROCEEDINGS
1977	
Sept. 2	Filed plaintiff's Notice of Appeal ($5.00 paid) from the final judgment entered on the 16th day of August, 1977.
	* * * * *
Sept. 7	Clerk's File Copy Transcript of Proceedings held before Judge Marovitz February 14 and 15, 1977 filed by official court reporter.
	* * * * *
Nov. 21	Filed Defendant's Exhibit [14] (IMPOUNDED)
1978	
Jan. 3	Certified and transmitted supplemental record on appeal to USCA consisting of defendant's IMPOUNDED exhibit.
Aug. 31	Filed certified copy of order from U.S.C.A. No. 77-2007: Judgment reversed and remanded in accordance with opinion filed.
Aug. 31	Filed Opinion of U.S.C.A.—REVERSED AND REMANDED
	* * * * *
Nov. 22	Enter order dated November 22, 1978: Plaintiff's motion for summary judgment stayed until ruling on pending appeal in the U.S. Supreme Court. November 28, 1978 is stricken for motion for summary judgment. Status hearing set for February 21, 1978 at 10 A.M.—Marovitz, J. Notices mailed 11/24/78

[DEF. EX. 8]

DEPARTMENT OF STATE
DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

LS No. 39937-B

Department of Foreign Affairs
Bureau of Legal Affairs
Nationality Division
Tlatelolco, D.F.

Re: Application for certificate of Mexican nationality.

I hereby respectfully request that I be issued a certificate of Mexican citizenship, on the basis of the facts confirmed by the attached documents, and in accordance with the legal provisions applicable to the case.

I therefore hereby expressly renounce United States citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially to that of the United States of America, of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the laws and authorities of the Mexican Republic.

Under oath to speak the truth, I state that I have no title of nobility to renounce, but supposing that, even without my knowledge, I might have the right

to such a title, I hereby formally renounce it, whatever its origin.

I also hereby submit the following data:

Full name of applicant: Laurence James Terrazas Wootton

Marital status: Single

Domicile: Parroquia 731-302, Colonia Del Valle, Mexico, D.F., Zone 12, Mexico.

Place and date of birth: Takoma Park, Montgomery County, Maryland, U.S.A., December 13, 1947.

Father's name and nationality: Carlos Terrazas Navarro. Mexican.

Mother's name and nationality: LaVerne Genevieve Wootton. American.

Mexico, D.F., November 16, 1970

[s] Laurence James Terrazas Wootton
Applicant's signature

[Illegible notation]

I, the Chief of the Division of Nationality and Naturalization of the Bureau of Legal Affairs, Department of Foreign Affairs, certify that this photocopy is a true and faithful copy of the original of the renunciation of United States citizenship made by Mr. Laurence James Terrazas Wootton in this Department on November 16, 1970, which appears in

File VII/521.12(73)/371507. This copy is issued in Tlatelolco, Federal District, on December 5, 1973.

[s] L. Olvera
Leopoldo Olvera

[DEF. EX. 9a]

DEPARTMENT OF STATE
DIVISION OF LANGUAGE SERVICES

(TRANSLATION)

LS No. 39937-B

I, the Under Secretary of Foreign Affairs, certify: That Laurence James Terrazas Wootton is Mexican by birth under the terms of Article 30(A)(II) of the Political Constitution of the United Mexican States, inasmuch as he has proved that he was born on December 13, 1947, in Takoma Park, Montgomery County, U.S.A., to a Mexican father. He has furthermore sworn adherence, obedience, and submission to the laws and authorities of the United Mexican States, and has expressly renounced all rights inherent to any other nationality, as well as all submission, obedience, and loyalty to any foreign government, especially to those which have recognized him as that national.

At the request of the party concerned, whose photograph is affixed to the margin, this certificate is issued in Tlatelolco, Federal District, on April 3, 1971.

[s] R. González S.
Rubén González Sosa

The Director General
of Legal Affairs

Oscar Galeano.

Certificate of Mexican Nationality by Birth No. 1962. Issued to Laurence James Terrazas Wootton. File VII/521.12(73)/371507.

Stamp tax not required in accordance with Article 4(V)(14) of the Schedule of the General Stamp Law.

I, the Chief of the Division of Nationality and Naturalization of the Bureau of Legal Affairs, Department of Foreign Affairs, certify that this photocopy is a true and faithful copy of the duplicate of Certificate of Mexican Nationality No. 1962, issued to Laurence James Terrazas Wootton on April 3, 1971, which appears in File VII/521.12(73)/3715007.

This copy is issued in Tlatelolco, Federal District, on November 28, 1973.

[s] L. Olvera
Leopoldo Olvera

[DEF. EX. 14]

UNITED MEXICAN STATES:)
STATE OF NUEVO LEON)
CITY OF MONTERREY) ss
CONSULATE GENERAL OF THE)
UNITED STATES OF AMERICA)

QUESTIONNAIRE

This Questionnaire will assist the Department of State in making a citizenship determination in your case. When completed it becomes a part of the official records of the United States Government. You are requested to answer the questions to the best of your knowledge and belief. Before furnishing information in this Questionnaire, you may seek the advice of legal or other counsel of your own choice.

NOTE: The word "foreign" as used in this Questionnaire includes any country outside the United States.

1. (a) During your foreign residence, have you previously appeared at a consular office of the United States for any purpose? no If "yes", give date of each appearance, place of such office and purpose of appearance. _____

(b) Have you ever been denied a passport of the United States or registration on the ground that you were not a citizen of the United States?

no If "yes", give date, place and reason for denial. _____

(c) Have you ever applied for a passport or registration as a citizen of the United States for any of your children? no If "yes", give their names and the date, place and result of each application.

(d) When and under what circumstances did you first become aware that you might be a citizen of the United States? I was born in Takoma Park, Maryland, U.S.A. on December 13, 1947, which automatically made me an American citizen.

(e) Have you ever informed any local or national official of a foreign state that you are a citizen of the United States? Yes If "yes", give name and address of such official and the date and circumstances under which he was so informed. Lic. Rubén González Sosa "Subsecretaria de Relaciones Exteiores" in Mexico City, Mexico. I applied for a Certificate of Mexican Nationality in Mexico City, Mexico, which he gave me on April 3, 1971.

2. Have you ever applied for naturalization as a citizen of a foreign state? no If "yes", give the following information:

Date of application _____
Place of application _____
Date of approval by country _____
Nature of document issued _____
Identification or number of document _____

State why you applied for this naturalization and the specific circumstances under which your application was made. _____

_____

_____

Did you intend by this naturalization, to abandon your allegiance to the United States or transfer your allegiance to the foreign state? _____
Explain. _____

_____

_____

3. Have you ever taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state? Yes If "yes", give the following information:

Date April 3, 1971
Place Mexico City, Mexico
Purpose Upon receiving this Certificate of Mexican Nationality I was asked to swear allegiance to Mexico which I did do willingly.

Why did you take the oath or affirmation? Since I had applied for this certificate, I felt that it was my duty to swear such allegiance. I did this because I believe that a person who asks for such a

document has the obligation to swear allegiance to that country. When they gave me this document I voluntarily took this oath. By taking this oath I did not consider that I was relinquishing my rights as an American citizen as far as the United States government was concerned, however, I did swear this oath of allegiance willingly and I was not under any pressures or influences (either mental or physical). This was a voluntary act on my part.

I have always felt allegiance towards both the U.S. and Mexico. My father was a Mexican diplomat and my mother was an American citizen. I consider it natural to love and respect both countries and thus, did not feel it wrong to swear allegiance to Mexico. My father's family was and still is, a very important and famous family in Mexican society. My great grandfather was the owner of the largest cattle ranch in all of Mexico and maybe, the whole world, in 1910. My father was a revolutionary fighter during the Mexican Revolution of 1910. Later on he helped form the strongest political party in Modern Mexico, the "PRI". He was the leader of this party in four states. He was the Secretary of Public Works in Mexico City. He was a member of the House of Representatives. He was the head of the Agricultural Bank of Mexico. He served as Chief of Inspectors during the Second World War. Mexico had 150,000 railroad workers in the U.S. doing

the work of American workers so that they could join the U.S. Army. My father was the head of the Spanish department of the FAO branch of the United Nations. He was the Managing Editor of Encyclopedia Barsa (Britannica in Spanish) and also, had the important job of training engineers from Spain in the use of U.S. road building machinery (this was due to a pact drawn up between the U.S. and Spain. Spain would allow the U.S. to have bases there and the U.S. would give Spaniards technical training). With good reason I loved and respected my father. I hope to continue his way of being. He taught me what was really Mexico. I learned to love Mexico, its customs, way of life. I feel more Mexican than American. I want to stay and live here. I plan on marrying a Mexican girl. I have learned what a great country Mexico is. In a very short time I have become a respected and well thought of person in Mexican society. I have many relatives here who I love. I want to be near them. I feel a part of Mexico. Even my tastes in food are Mexican. I could not live a double life anymore. There comes a time in everyone's life when he has to sit down and decide what he wants to do with his life. I did this and decided that my future happiness was here in Mexico. For that reason I became a Mexican. I do not want anyone, either Mexican or American, to think that for one moment I do not love the United States. I love, respect, and shall always

cherish the fact that I have American blood in my body. I do not plan on ever breaking my ties with the U.S. My father, mother, and sister are there. My old friends are there. I have many wonderful memories of the United States and I sincerely hope that I can return often so that I don't lose contact with everything that I love about the United States. My becoming a Mexican national does not mean in any way, shape, or form, that I am protesting anything. I just happened to have two nationalities and decided that to be truly happy I wanted to become a Mexican citizen. This is not a disloyal act as far as I am concerned. I hope that whoever reads this statement will take into account that I had two nationalities. I had the right to choose. All my life I shall remember the U.S.A. with a great amount of love and respect. If I possible [*sic*] have done wrong, forgive me.

Did you attempt to avoid taking the oath or affirmation? no . If "yes", explain what you did and the name and address of any person having knowledge of your action. _____

If you took no action, explain why you did not. I felt that I was doing what my conscience told me to do. I did not think it wrong. I felt allegiance towards Mexico (I did not stop loving the U.S.A.). Reread statement above.

Did you intend by this oath, or affirmation, to abandon your allegiance to the United States, or transfer your allegiance to the foreign state? No . Explain. I decided that I was going to live in Mexico and I wanted to be a Mexican citizen. I did not think that I was going to lose my American citizenship as far as U.S. law was concerned. This is not the case. I should have realized this, but I didn't. I'm sorry.

4. Have you ever entered or served in the armed forces of a foreign state? no If "yes", give the following information:

Country _____
Date of Entry _____
Branch of Service _____
Date of Discharge _____
Why did you enter foreign Military Service?

_____

_____

Did you try to avoid service? _____ If "yes", explain what you did, and give names and addresses or persons having knowledge of your action.

_____

_____

_____

Did you intend, by this foreign military service, to abandon your allegiance to the United States or transfer your allegiance to the foreign state? _____ Explain. _____

_____

5. Have you ever accepted, served in, or performed the duties of any office, post or employment under the government of a foreign state or political subdivision thereof? no If "yes", give the following information regarding the post, office or employment:

Date employment or appointment began _____
Date terminated _____
Place or places of employment _____
Title of position _____
Name of superior _____
Description of duties _____

_____

Name of Government Organization _____
Was an oath or affirmation of allegiance required for this position or employment? _____

_____

Was your former nationality a prerequisite for this position? _____

Why did you accept this employment? _____

_____

_____

Did you intend, by accepting or performing the duties of this office, post or employment, to transfer your allegiance to the foreign government or abandon your allegiance to the United States? _____ Explain. _____

_____

_____

6. Since December 24, 1952, have you:

(a) sought or obtained registration as a citizen of a foreign country, applied for or obtained a passport, certificate, card, or other document therefrom in which you were described as a citizen of a country other than that of the United States? Yes

(b) held any remunerative post or employment for which foreign nationality was or is a prerequisite? no

(c) been a member of any profession or organization for which foreign nationality was or is a prerequisite? no

(d) claimed any other benefit of your foreign nationality? no

If answer to any of these questions is "yes", give the following information:

Type of document or benefit Card of Identity (Matrícula: #1300).

Date sought May 21, 1966
Date obtained May 21, 1966
Date last used June, 1966

Explain fully why you sought, obtained or used each benefit or document. I intended to travel to Mexico for a vacation and did not want to go as a tourist, but as a Mexican citizen. The card was

obtained on May 21, 1966 at the Mexican Consulate (Chicago, Illinois), where I lived.

Did you intend by seeking or claiming any one of these benefits, to transfer your allegiance to the foreign state or abandon allegiance to the United States? No Explain. I only wanted to come to Mexico as a tourist and did not want to take out a Tourist Card from the Mexican Government. I had no intentions of staying in Mexico permanently at that time.

JURAT

I have (read) (had read to me) the foregoing questions and answers consisting of four pages in the English language and I understand their contents. I also understand that this document becomes a part of the official records of the United States Government; also, that I may seek the advice of legal counsel prior to signing it under oath.

I solemnly swear that the answers and explanations made by me in this questionnaire and in any attachments which are referred to herein are true to the best of my knowledge and belief.

/s/ Laurence James Terrazas
(signature)

"Subscribed and sworn to before me this day of Nov. 15, 1971, 19 . The whole of the above having been first read and explained to the said , who appeared perfectly to understand the same, he signed (or made his mark) in my presence."

/s/ Wesley H. Parsons
WESLEY H. PARSONS
Consul of the United States
Vice Consul of the
United States of America

[Def. Ex. 21-A]

(PLEASE PRINT OR TYPE)

✓ For Department Decision

DEPARTMENT OF STATE

APPLICATION FOR ☐ PASSPORT ☒ REGISTRATION

(Use additional sheets when space provided is not adequate)

POST LOCATION Monterrey, Mexico

POST ACTION

PASSPORT ISSUED
No. ____
Date ____
Expires ____

REGISTRATION APPROVED
Date ____
Expires ____

CARD (CERT.) OF IDENT. & REG.
No. ____
Date ____

☐ $1 Application fee collected
☐ $9 Fee collected
☐ No Fee passport
☐ Official passport
☐ $1 fee collected (for card or cert.)
☐ 48-page passport

A

TO BE COMPLETED BY ALL APPLICANTS

(First name) (Middle name) (Last name)

I Laurence James Terrazas, a citizen of the United States, do hereby apply for (a passport) (registration)

DATE OF BIRTH Month	Day	Year	PLACE OF BIRTH (City, state/province, country)
Dec.	13	'47	Takoma Park, Md., U.S.A.

HEIGHT	COLOR OF HAIR	COLOR OF EYES	SOCIAL SECURITY NO.
5 Ft. 10 In.	brown	brown	355-38-6165

VISIBLE DISTINGUISHING MARKS: none

OCCUPATION: Bus. Admintr.

NOW RESIDING AT: Mexico
Guayana Holandesa 331, Mtry., N.L.

PERMANENT RESIDENCE (Street address, city, state, U.S. ZIP Code) (If same as above, write "Same"): 8036 N. Merrill, Niles, Illinois 60648

MY LAST PASSPORT WAS OBTAINED FROM (Note: If included in another's passport, state name of bearer)

Location of Issuing Office: ____ Date of Issuance: ____

Number: Bearer:
☐ Submitted herewith
☐ Seen and returned
☐ Other disposition (State)

MY LAST REGISTRATION AS A CITIZEN OF THE UNITED STATES WAS APPROVED

Location of Registering Office: ____ Date of Registration: ____

IN THE EVENT OF DEATH OR ACCIDENT NOTIFY (Name in full, relationship, street address, city, state)

Mrs. LaVerne Terrazas (mother) 8036 N. Merrill, Niles, Ill. 60648

HAVE YOU EVER BEEN REFUSED A PASSPORT OR REGISTRATION AS A CITIZEN OF THE UNITED STATES? ☐ Yes ☒ No

IF ANSWER IS "YES", EXPLAIN WHEN AND WHY

B

TO BE COMPLETED BY AN APPLICANT WHO BECAME A CITIZEN THROUGH NATURALIZATION

I IMMIGRATED TO THE U.S. (Month, year)	I RESIDED CONTINUOUSLY IN THE U.S. From (Year) To (Year)	NATURALIZATION CERTIFICATE NO. ☐ Submitted herewith ☐ Seen and returned ☐ Previously submitted

PLACE NATURALIZED (City, state)	NATURALIZATION COURT	DATE NATURALIZED

C

COMPLETE ONLY IF OTHERS ARE TO BE INCLUDED IN PASSPORT OR REGISTRATION AND SUBMIT GROUP PHOTOGRAPH

(WIFE'S) (HUSBAND'S) FULL LEGAL NAME	☐ NATIVE BORN ☐ NATURALIZED	NATURALIZATION CERTIFICATE NO. ☐ Seen and returned

PLACE NATURALIZED (City, state)	NATURALIZATION COURT	DATE NATURALIZED

NAME IN FULL OF CHILDREN INCLUDED	PLACE OF BIRTH (City, state/province, country)	DATE OF BIRTH (Month, day, year)	RESIDED IN U.S. (From-To)
	PASSPORT OFFICE DEC 14 1971		

D

EVIDENCE OF PRIOR DOCUMENTATION OF ABOVE-NAMED PERSONS TO BE INCLUDED (For completion by Consular Office)

NAMES	PASSPORT NO.	DATE OF ISSUE	CANCELED OR OTHER DISPOSITION	DATE OF REGISTRATION OR BIRTH REPORT	LOCATION OF OFFICE
			RECEIVED DEC 16 1971		

E

OTHER EVIDENCE OF U.S. CITIZENSHIP PRESENTED (State disposition)

SEE FS-1765

PASSPORT OFFICE PT/FNS

DEFENDANT'S EXHIBIT 21 A NO.

FORM FS-176 12-67 (OVER - YOU MUST COMPLETE PAGE 2) FORM APPROVED BUDGET BUREAU NO. 47-R0012

21a

FORM FS-176 12-67

F

FATHER'S NAME: Carlos Mariano Terrazas Navarro
FATHER'S COUNTRY OF BIRTH: Mexico
[ ] U.S. CITIZEN [X] NOT U.S. CITIZEN

DATE NATURALIZED: no
PLACE NATURALIZED (City, state):

FATHER'S DATE OF BIRTH: July 10, 1903
[X] FATHER DECEASED [ ] FATHER RESIDING AT
FATHER RESIDED IN U.S. From 1944 To 1970

MOTHER'S MAIDEN NAME: LaVerne Genevieve Wootton
MOTHER'S COUNTRY OF BIRTH: U.S.A.
[X] U.S. CITIZEN [ ] NOT U.S. CITIZEN

DATE NATURALIZED: U.S. birth
PLACE NATURALIZED (City, state):

MOTHER'S DATE OF BIRTH: Sept. 28, 1925
[ ] MOTHER DECEASED [ ] MOTHER RESIDING AT
MOTHER RESIDED IN U.S. From ALWAYS To

G

[X] I WAS NEVER MARRIED
[ ] I WAS LAST MARRIED ON (Date)
PRESENT FULL LEGAL NAME OF HUSBAND OR WIFE: none

HUSBAND'S OR WIFE'S PLACE OF BIRTH (City, state):
HUSBAND'S OR WIFE'S DATE OF BIRTH:
[ ] HUSBAND OR WIFE IS U.S. CITIZEN
[ ] HUSBAND OR WIFE IS NOT U.S. CITIZEN

HUSBAND OR WIFE NOW RESIDING AT:

[ ] MARRIAGE NOT TERMINATED
[ ] MARRIAGE TERMINATED BY [ ] DEATH [ ] DIVORCE ON

H

PROPOSED TRAVEL PLANS

[X] I INTEND TO RETURN TO THE UNITED STATES WITHIN 6 MONTHS
____ YEARS TO [ ] RESIDE [X] VISIT [ ] INDEFINITE
[ ] I NEVER INTEND TO RETURN TO THE UNITED STATES

I INTEND TO CONTINUE TO RESIDE ABROAD FOR THE FOLLOWING REASON
I am living and working in Monterrey, N. L. Mexico and plan to get married within a year.

I

COMPLETE IF RETURNING TO U.S.

PORT OF DEPARTURE:
DATE OF DEPARTURE:
NAME OF SHIP OR AIRLINE:

J

WARNING: Travel to or in countries or areas for which the passport is not valid will result in the withdrawal of passport facilities and may result in prosecution under Section 1544 of Title 18, United States Code.

False statements made knowingly and willfully in passport applications or in affidavits or other documents submitted therewith are punishable by fine and/or imprisonment under the provisions of 18 USC 1001 and/or 18 USC 1542. 18 USC 1543 provides for a fine and/or imprisonment for the alteration or mutilation of a passport issued pursuant to this application. 18 USC 1544 provides for a fine and/or imprisonment for the use of a passport in violation of the restrictions therein.

I have not (and no other person included in the application has), since acquiring United States citizenship, been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; ever sought or claimed the benefits of the nationality of any foreign state; or been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States, or conspiring to overthrow, put down or to destroy by force, the Government of the United States.

(If any of the above-mentioned acts or conditions have been performed by or apply to the applicant, or to any other person to be included in the passport or registration, the portion which applies should be struck out, and a supplementary explanatory statement under oath (or affirmation) by the person to whom the portion is applicable should be attached and made a part of this application.)

I solemnly swear (or affirm) that the statements made on all the pages of this application are true and that the photograph attached is a likeness of me and of those persons to be included in the passport.

OATH OF ALLEGIANCE

[redacted]

(To be signed at same time by husband/wife to be included in passport)

(To be signed by Applicant in presence of person administering oath)

Subscribed and sworn to (affirmed) before me this NOV 15 1971 day of _____, 19____.

(Seal)

Wesley H. Parsons
Consul ~~Vice Consul of the~~ of the United States at Monterrey, Mexico
United States of America

22a

[Def. Ex. 218]

FORM APPROVED BUDGET BUREAU NO. 47-R0012

DEPARTMENT OF STATE

SUPPLEMENTAL APPLICATION STATEMENT TO BE COMPLETED AS REQUIRED BY CONSUL

- [X] First Time Applicant
- [X] Referred to Department for Decision
- [ ] Marriage Prior to March 3, 1931
- [ ] Resided Outside United States Over 10 Years Since Last Application

(First name) (Middle name) (Last name)

I Laurence James Terrazas a United States citizen, do solemnly swear (affirm) to the following statements.

I CEASED TO RESIDE IN THE UNITED STATES ON OR ABOUT	I DEPARTED FROM THE UNITED STATES ON (Date)
May, 1968	May 13, 1968

I DEPARTED BY [ ] Ship [X] Airline	NAME OF SHIP OR AIRLINE COMPANY	PLACE OF DEPARTURE
X Auto.	I left in my father's car	Laredo, Texas

I HAVE SINCE RESIDED IN THE FOLLOWING COUNTRIES: Mexico

I AM NOW RESIDING IN (Name of country) [X] Permanently [ ] Temporarily

MY REASONS FOR SUCH FOREIGN RESIDENCE ARE
I have been studying in Mexico (business administration). I graduated in June, 1971. I am working here and plany to marry in a year.

DATA ON BROTHERS AND SISTERS, LIVING AND DECEASED

NAME	DATE AND PLACE OF BIRTH	PRESENT ADDRESS
Miss Constance E. Terrazas	March 16, 1951	Chicago, Ill.; 8036 N. Merrill St., Niles, Ill. 60648

IF ANY BROTHERS AND/OR SISTERS HAVE APPLIED FOR A PASSPORT OR REGISTRATION, FURNISH FOLLOWING INFORMATION

NAME	DATE OF APPLICATION	PLACE OF APPLICATION
none		

OTHER REFERENCES IN THE UNITED STATES

NAME	ADDRESS
Miss Dorothy Wootton	6959 N. Ridge Blvd., Chicago, Ill.
Mrs. Irene Schliephake	3836 N. Troy St., Chicago, Ill.

SCHOOLS ATTENDED IN THE UNITED STATES

NAME	ADDRESS	PERIOD OF ATTENDANCE
T. Jefferson Grammar School	Park Ridge, Ill.	1953-1959
East Maine Twp. High School	Park Ridge, Ill.	1961-1965
~~University of Illinois, Chicago Circle, Chicago, Ill.~~	~~1965-1968~~	

BAPTISMAL DATA | CHURCH | ADDRESS
First Methodist Church of Park Ridge (Ill.) 1959

MARRIAGE PRIOR TO MARCH 3, 1931

The following section is to be completed by a woman applicant (or a wife to be included in a passport or registration) who, (1) was previously married before March 3, 1931, and (2) has not been issued or included in a United States passport or registration as a United States citizen abroad since March 3, 1931.

PREVIOUS MARRIAGE TERMINATED BY [ ] Death [ ] Divorce	DATE TERMINATED
NAME OF FORMER HUSBAND (First, middle, last)	PLACE OF HIS BIRTH (City, state)

IF FORMER HUSBAND WAS BORN OUTSIDE OF THE UNITED STATES, COMPLETE ONE OF THE FOLLOWING:

[ ] HE WAS NATURALIZED AS A U.S. CITIZEN ON	PLACE (City, state)	NATU

[ ] HE OTHERWISE ACQUIRED U.S. CITIZENSHIP AS FOLLOWS

[ ] FORMER HUSBAND WAS NOT A U.S. CITIZEN.

I have read (had read to me) the ENGLISH language) the contents of this application and I swear that I understand the statements contained herein.

Laurence James Terrazas
(Signature of Applicant)

DEFENDANT'S EXHIBIT 218 NO.

FORM FS-176S 12-67

238

EVIDENCE SUBMITTED	DISPOSITION
Appl's birth certificate issued Aug. 8, 1971.	Attached
Pbtostat of Ident.Card #1300 iss.to appl.on 5-21-66 by Mexican Consulate Chicago, Ill. (orig. seen and returned).	"
Questionnaire and affid. exec. by applicant.	"
Cert.of Loss of Nationality prepared for subject.	"
Affidavit of expatriated person exec. by appl.	"
Certified copy of Certificate of Mexican Nationality.	"

OPINION OF CONSULAR OFFICER

NOTE: The consular officer should cite in his opinion the facts and conclusions required to decide the case. Additional background information may be given here. Use extra pages if necessary.

December 9, 1971

It is the opinion of the consular officer that the subject expatriated himself under Section 349(a)(2) of the Immigration and Nationality Act by voluntarily taking an oath of allegiance to a foreign state and specifically renouncing any claim to his American citizenship in connection with his application for a Certificate of Mexican Nationality. The subject came to the Consulate General to clarify his citizenship status and wishes to receive a definitive statement regarding his loss of nationality.

It is therefore recommended that this application for registration be disapproved.

Wesley H. Parsons

Wesley H. Parsons
American Vice Consul

* GPO : 1968 O - 305-216 (117)

[DEF. EX. 15]

UNITED MEXICAN STATES:	)	
STATE OF NUEVO LEON	)	
CITY OF MONTERREY	)	ss
CONSULATE GENERAL OF THE	)	
UNITED STATES OF AMERICA	)	

To whom it may concern:

I am the son of a Mexican citizen who was sent to the United States by the Mexican Federal Government in 1944. My father was in charge of 150,000 Mexican railroad workers who were working on U.S. railroad lines during the Second World War. My father was stationed at the Railroad Retirement Board offices in Chicago, Ill. It was there that he met my mother. My father's name was Carlos Mariano Terrazas Navarro and my mother's name was LaVerne Genevieve Wootton. My father and mother were married in Indiana in 1947. My father was a very important political leader in Mexico. He was Representative of his native state of Chihuahua in Mexico's House of Representatives. He was lieutenant governor of his home state. He was head of the strongest political party in Mexico (the PRI) in three different states. He was the head of Public Works in Mexico City. He was a personal friend and helped three different Presidents of Mexico (Cardenas, Avila Camacho, and Miguel Aleman). He was the Head of the Spanish speaking department of the F.A.O. branch of the United Nations. He was the founding editor of the Encyclopedia Barsa (Encyclo-

pedia Britannica in Spanish). My father taught me to love and respect Mexico.

I "Laurence James Terrazas" was born in Takoma Park, Maryland, U.S.A. on December 13, 1947. My father after the Second World War, applied for residence in the U.S.A. as a Mexican national; he was granted this permanent residence by the U.S. Immigration and Naturalization Service.

I was brought up in an entirely American atmosphere. I went to Grammar School, Jr. High, High School, and University in the Chicagoland area. I first came to Mexico on my own in 1963. I was 15 years old at the time. I fell in love with Mexico, my Mexican relatives, and the Mexican people on the whole. My father registered me in the Mexican Consulate offices in Chicago as a Mexican citizen, due to the fact that I was his son and he never became a naturalized American citizen. According to international law, he was in his rights.

When I was 18 years old, I registered with my Local Draft Board. I have never tried to break any laws and I consider myself to be a law abiding person. In 1967 and again in 1968, I applied for permission to leave the country to go to Mexico to study. My draft Board gave me this permission. I kept my Draft Board completely informed about my whereabouts and constantly sent them copies of my grades.

For the past 3 years, I have been studying Business Administration in Mexico. In June, 1971, I graduated. Not only did I receive first place amongst my graduating class, but I was also President of the

Student Council. I have just completed giving a summer course to a group of High School students from Sacramento, California, U.S.A., on Mexican History and Culture.

In 1970, I decided that I wanted to stay here in Mexico and live here permanently. I have a great affection for this country and its people. This is not hard to understand, since my father was a citizen of this country and fought during the Mexican Revolution of 1910-1927. I plan on getting married to a Mexican girl within the year. By becoming a Mexican, it will be easier for me to work here. I hope to be able to better relations between both the United States and Mexico. Since I have blood relations on both sides of the Rio Grande, I believe that it is my duty to better the understanding between each country.

On April 3, 1971, I received a Certificate of Mexican Nationality. I took an oath of allegiance to Mexico in Mexico City. Since Mexico and the United States are allies, I didn't believe that I was committing any overt or treasonable act against the United States. Also, since I had dual nationality, I believed that I was within my rights to choose whichever nationality I so sought. This was a voluntary personal act on my behalf and was not forced either physically or mentally into committing this act. I did not believe that by so doing I would lose my rights as an American citizen. However, that is not the case. I am no longer an American citizen according to U.S. laws. This deeply hurts me since I truly love the United States of America. It is a great country

and I do not want my taking out Mexican citizenship to be considered in any way, shape, or form, as a protest movement on my part. I simply felt that my future happiness and success were to be found in Mexico. Since I had a hardship deferment from my Local Draft Board (when my father passed away on November 23, 1970, I applied for a hardship deferment due to the fact that I am the only surviving male member of my immediate family and the only protector of my mother and sister), I did not think that my becoming a Mexican citizen could be taken as a movement towards evading the draft. I considered myself free in that respect. I did not plan to break any U.S. military laws. I have no criminal record, including misdemeanors. I try to respect and obey any and all laws.

I have tried to give you a general idea of my situation so that you will be able to make a just decision regarding my person and citizenship. I do sincerely hope that I shall not be banned from returning to the United States of America as a visitor or possible future immigrant. I have never consciously done anything against the U.S. government and I do hope that my clean record will help me prove to you that all I have said about my respect and affection for the U.S.A. is the whole truth.

I want to avoid, as much as possible, having any black marks placed in front of my name as far as the United States government is concerned. I have always tried to obey U.S. laws to the best of my ability and to the fullest extent. I wish to keep up

this record that I have so carefully tried to maintain. I hope that my decision to become a Mexican citizen does not mean that the U.S. government considers me to be an undesirable person. I hope that my family does not have to suffer because of my decision. They in no way influenced my decision. If some overt act has been committed, I accept the blame. I did not knowingly offend the U.S. government, and hope that this fact shall be taken into account when you pronounce your final decision in my case. Thank your for allowing me to express the facts as far as my side is concerned. Any further information that you shall need, I will gladly give you upon such request.

I swear that all the above information is the whole truth and nothing but the truth, so help me God.

Yours truly,

/s/ Laurence James Terrazas
LAURENCE JAMES TERRAZAS
Sworn and subscribed to
before me this Nov. 15, 1971

/s/ Wesley H. Parsons
WESLEY H. PARSONS
Vice Counsul of the
United States of America

[DEF. EX. 6]

UNITED MEXICAN STATES:)
STATE OF NUEVO LEON)
CITY OF MONTERREY) ss
CONSULATE GENERAL OF THE)
UNITED STATES OF AMERICA)

I, Laurence James Terrazas, solemnly swear that I acquired United States nationality by virtue of birth at Takoma Park, Maryland on December 13, 1947.

That I took an oath of allegiance to Mexico in connection with a Certificate of Mexican Nationality issued to me on April 3, 1971 at Mexico, D.F., Mexico.

I further swear that the act mentioned above was my free and voluntary act and that no influence, compulsion, force, or duress was exterted upon me by any other person, and that it was done with the intention of relinquishing my United States citizenship.

I have read the foregoing statement in the English language and I understand its contents.

/s/ Laurence James Terrazas
LAURENCE JAMES TERRAZAS

Subscribed and sworn to before me this 15th day of November 1971.

/s/ Wesley H. Parsons
WESLEY H. PARSONS
American Vice Consul

[DEF. EX. 5]

DEPARTMENT OF STATE

FOREIGN SERVICE OF THE
UNITED STATES OF AMERICA

CERTIFICATE OF LOSS OF
NATIONALITY OF THE UNITED STATES

This form is prescribed by the Secretary of State pursuant to Section 501 of the Act of October 14, 1940 (54 Stat. 1171) and Section 358 of the Act of June 27, 1952 (66 Stat. 212)

DEPARTMENT OF STATE

—Dec. 21, 1971

CERTIFICATE APPROVED
Director Passport Office

Consulate General of the United States of America at Monterrey, Mexico ss:

I, Wesley H. Parsons, hereby certify that, to the best of my knowledge and belief, Laurence James Terrazas was born at Takoma Park, Montgomery County, Maryland, on December 13, 1947.

That he resided in the United States; 1947-May 1968.

That he resides at Guayana Holandesa 331, Monterrey, Mexico.

That he acquired the nationality of the United States by virtue of birth in the United States of America;

That he acquired the nationality of Mexico by virtue of birth in the United States of a Mexican father;

That he took an oath of allegiance to Mexico, a foreign state, in connection with his application for a Certificate of Mexican nationality.

That he thereby expatriated himself on April 3, 1971 under the provisions of Section 349(a)(2) of (the Immigration and Nationality Act).

That the evidence of such action consists of the following:

Documents listed below.

That attached to and made a part of this certificate are the following documents or copies thereof: (1) Affidavit executed by Mr. Terrzas on Nov. 15, 1971. (2) Copy of Certificate of Mexican Nationality No. 1962.

In testimony whereof, I have hereunto subscribed my name and affixed my office —— day of December, 1971.

[SEAL]

/s/ Wesley H. Parsons
WESLEY H. PARSONS
Vice Consul of the
United States of America

☆ U. S. GOVERNMENT PRINTING OFFICE: 1979 295724 15

Supreme Court, U. S.
FILED
AUG 13 1979
MICHAEL RODAK JR., CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

No. 78-1143

CYRUS VANCE, Secretary of State, Appellant

v.

LAURENCE J. TERRAZAS

On Appeal From the United States Court of Appeals For the Seventh Circuit

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APPENDIX TO BRIEF FOR THE APPELLEE

Item		Page
1.	P.21 of Deposition of Wyatt Johnson	A1
2.	Excerpt from Direct Examination of Wesley Parsons Feb. 15, 1976 (P.219) Parsons advised that obtaining of Certificate of Mexican Nationality was expatriating act.	A2
3.	Parsons Cross-examination (P.262) Parsons acknowledgement that Terrazas was surprised and did not know that he had expatriated himself. Also admission did not tell Terrazas to seek a lawyer	A3
4.	Parsons Cross-examination (P.257) Parsons admission that he did no investigation when informed that Terrazas did not believe that he had lost his rights as a U.S. Citizen.	A4
5.	Parsons Cross-examination (P.263) Admission of mistake of law and misrepresentation of law by Parsons.	A5

		Page
6.	Ibarra Re-direct examination (P.465) Admission that Terrazas did no action in the Consular Office to expatriate himself. That the Certificate of Mexican Nationality was deemed to have expatriated him. The expatriating act was November 1970.	A6
7.	Ibarra Direct examination (P.302) Admission that a Mexican National was making determinations as to which Americans were to be expatriated.	A7
8.	Ibarra Cross-examination (P.400) Admission by Ibarra that she made changes in Exhibit 14A.	A8
9.	Ibarra Cross-examination (P.402) Testimony as to manner of changes.	A9
10.	Ibarra Cross-examination (P. 403) Testimony as to modus operandi in documenting lost citizenship.	A10
11.	Ibarra Cross-examination (P.404) " " "	A11
12.	Ibarra " " (P 407) " " "	A12
13.	Ibarra " " (P.410) " " "	A13
14.	Ibarra " " (P.415) Admission that there is no oath in Mexico.	A14
15.	Ibarra Cross-examination (P.417) Admission to no inquiry by the Department of State or the Mexican authorities.	A15
16.	Ibarra Cross-examination (P.418) " " "	A16
17.	Parsons Cross-examination (P.269) Admission by Parsons that the Department of State was not informed as to all the facts prior to issuing Certificate of Loss of Nationality.	A17
18.	Parsons Cross-examination (P.273) Admission that the possession of Certificate of Mexican Nationality was the only expatriating act.	A18
19.	Parsons Cross-examination (P. 274) Indication of lack of knowledge on the part of Parsons in "documenting" the case.	A19
20.	Parsons Cross-examination (P.235) Admission that Parsons knew what an oath was.	A20

		Page
21.	Parsons Cross-examination (P.236) Admission that Exhibit 32 bore a signature which Parsons did not recognize.	A21
22.	Parsons Cross-examination (P.237) Admission that Terrazas' signature is not on the Certificate of Mexican Nationality.	A22
23.	Application for Registration (4 pages) dated December 16, 1971.	A23
24.	Birth Certificate Laurence Terrazas	A27
25.	Certificate of Loss of Nationality	A28
26.	Excerpts from Foreign Affairs Manual which Parsons used.	A29
27.	Uncontested testimony of Laurence Terrazas relative to alleged Application for Certificate of Mexican Nationality, Nov. 16,1970 (PP.25,26,27)	A33
28.	Excerpts from uncontroverted testimony relative to the execution of one of the two Applications (PP. 19,31,37)	A36
29.	Uncontroverted testimony as to how Terrazas got to the Consulate (P.560)	A39
30.	Testimony of Laurence Terrazas relative to the execution of Exhibits 14 and 14A (PP.558,559)	A40
31.	Excerpt of testimony of Laurence Terrazas accusing Parsons of representing to him that he (Terrazas)had committed an overt act of treason (P.551)	A42
32.	Denial of Laurence Terrazas that he executed Exhibit 32 (being an Application for Certificate of Mexican Nationality which Parsons also admitted did not bear Terrazas' signature (P.555)	A43
33.	Article from Chicago Tribune of Jan.29,1979 wherein the newspaper reports that Immigration and Naturalization Service is unable to keep track of aliens.	A44

From the testimony of Wyatt Bernard Johnson given during Evidence Deposition taken in the U.S. District Court proceeding.

BY MR. DENT:

Q All right. In any event, you were in Mr. Parsons' office?

A Yes.

Q And was anyone else there?

A No. [illegible]e and I were there. He showed me this document that this lawy[illegible] had written and the lawyer -- and as I recall, them going back [illegible]ve years, it says, "Come now, Mr. Parsons, we must all -- we all make mistakes. We must amend our ways, and admit to our [illegible]rors."

He was trying to put the blame on Wes as far as why this man rend[illegible]ed. In other words, Wes made him do this and Wes put out [illegible]her paper where he had signed, this is -- he said to me thi[illegible]s a lesson --

Are you allowed to use profanity or just --

MR. DITKOWSKY: Use it. Use the word he said.

MR. DENT: Is it necessary for him?

You use it, yes, if --

BY THE WITNESS:

A Well, he said this is a lesson in C Y A.

MR. DITKOWSKY: C Y A?

MR. DENT: Cover your ass, I think. It's a legal term.

BY THE WITNESS:

A Yeah, he said, and this is why -- he said to me

Terrazas or Larry Terrazas.

"Question: Was anyone else present in the room?

"Answer: I don't think so. I think it was just Wesley, John and myself."

Does that statement comport with your recollection of the first meeting?

A No, it does not.

Q All right; at the time of your first meeting with Mr. Terrazas, did he mention to you -- well, did he in your discussions with regard to the Mexican Certificate ask or mention to you its effect on his American citizenship?

Admission by Parsons that he misled Terrazas in informing him that CMN is exp. act

A Well, after he told me that he had one, and so forth, I advised him that as far as I knew, obtaining a Certificate of Mexican Nationality was an expatriating act. We discussed it in that context. In fact, I just finished saying: If you have got a Certificate of Mexican Nationality, you've committed an expatriating act and you've lost your citizenship.

Q Did he ever say to you that he did not see that he could have jeopardized his American citizenship?

A That he did not see how he could have jeopardized his American citizenship?

Q Yes.

A I don't recall him ever having said that.

MR. DITKOWSKY: This seems to be impeaching

MR. DITKOWSKY: Okay, I will withdraw the question.

BY MR. DITKOWSKY:

Q Now, Mr. Witness, you testified that when you told Mr. Terrazas that he had expatriated himself, that he was surprised, is that correct?

A He was surprised, yes. Yes, I would say he was surprised.

Q As a matter of fact, he didn't know that he had expatriated himself, isn't that true?

A Yes, that is true. He was not aware that he had expatriated himself.

Q And he didn't know that he had allegedly expatriated himself until you told him that he had, isn't that correct?

A That is true.

Q And did you tell him the consequences of expatriation?

A The consequences of expatriation? We discussed right there in the office how to get back to the United States, what he would have to do to apply for a visa, and so on and so forth. He brought up the matter of the draft.

Q Did you tell him to seek counsel of a lawyer?

A No, I did not.

his renunciation. If you have got anything that impeaches this man's testimony, let's hear it.

BY MR. DITKOWSKY:

Q What did you do when you read this document -- I am referring again to 15 -- and read the words, quote: "I did not believe that by so doing, I would lose my rights as an American citizen"?

8 FAM 224.9 provides for protections for citizen, yet no protection was afforded. Parsons according to Johnson C.Y.A

A Again, nothing. I didn't do anything.

Q Did you believe that you should then have the witness sign another document in direct contradiction to this document?

A This was Mr. Terrazas' statement. This was a statement that he wanted to make the Department of State.

This was Mr. Terrazas' statement. I asked Mr. Terrazas to subscribe and swear before me, and I didn't do anything with that piece of paper, Mr. Ditkowsky. I want to make it clear.

MS. MOSELEY: Your Honor --

BY MR. DITKOWSKY:

Purpose of legal counself is illustrated- to prevent the presentation of documentation which does not reflect the truth, but which can be use against

Q But you had him sign another document that said that he did believe that he was giving up his American citizenship, isn't that correct?

A Mr. Ditkowsky, a document was presented for his signature. Now, he signed it. I want to make it clear I can't force anyone to sign anything.

A To speak to whose superiors, sir?

Q The people who were to supervise you?

A No.

Q Did you tell him to seek the counsel of anybody else beside yourself?

A No.

Q Did you at this point tell him that he was an alien of the United States?

A Sir, there is no such thing as an alien of the United States.

Q Did you tell him he was no longer a United States citizen?

A I told him that to the best of my knowledge and understanding of the law, he had committed an expatriating act. Again, he wanted an authoritative decision. I explained to him the only way to get it was a Certificate of Loss. I couldn't approve a Certificate of Loss, that it had to go to Washington. But in every case that I had seen like this before or it had been my experience to hear about, the Certificate of Mexican Nationality was considered to be an expatriating act. It had always been upheld. n.B Parsons misrep of the law. Not true in Matheson case.

Q Sir, did he tell you that he wanted a Certificate of Loss of Nationality?

A No, sir. He told me what he wanted was a letter that he was no longer a citizen so that he could advise his

THE COURT: Just another case you were handling?

THE WITNESS: Yes.

BY MS. MOSELEY:

Q Did Mr. Terrazas take any action at the United States Embassy, at the Consular Office, that would have expatriated him?

A At the Embassy?

Q At the Embassy. When you met him, did he take any action which would have expatriated him, or at the Consular Office, I am sorry. Did he take any action at the Consular Office that would have expatriated him?

A Not that I remember.

Q The Certificate of Loss did not expatriate him, did it?

A The Certificate of Loss? No, it was the Certificate of Mexican Nationality.

Q And when was the expatriating act to the best of your understanding?

A November 1970.

Q And that was before Mr. Terrazas ever came to the Consular Office, isn't that correct?

A Yes.

Q So that at the time you met Mr. Terrazas, it was too late, or did you consider it to be too late to do any-

Duties of Ibarra, a Mexican National, to make DETERMINATIONS as to citizenship. 302

THE COURT: Just the Officer?

THE WITNESS: Yes, sir.

THE COURT: All right, proceed, now.

MS. MOSELEY: Your Honor, in connection with Ms. Ibarra's testimony, I present for the Court's attention a Career Summary similar to Mr. Parsons'.

THE COURT: Will you give a copy to Ken? Do you have a copy, Ken?

MS. MOSELEY: A copy has been provided to Mr. Ditkowsky. It is marked Defendant's Exhibit 35-A.

THE COURT: All right.

BY MS. MOSELEY:

Q In August of 1971, what were your duties with the Consular Office?

A I was a Consular Assistant, and I was taking passport applications and making determinations of nationality.

THE COURT: Keep your voice up now.

MR. DITKOWSKY: I am sorry, I didn't hear the last.

THE WITNESS: Making determinations of nationality.

BY MS. MOSELEY:

Q Have you ever met Laurence James Terrazas, the plaintiff in this case?

A Yes, I have.

Q When did you first meet him?

A About the end of August of 1971 or early September.

Ms Ibarra is a Mexican National who in open Court admits making changes on Exhibit 14 a 400
many occasions you made changes in a document referred to as 14-A?

THE COURT: Objection; immaterial.

MS. MOSELEY: Objection.

MR. DITKOWSKY: No, it is not, your Honor.

THE COURT: Objection sustained. You are talking about documents generally?

MR. DITKOWSKY: No. No, I am talking about 14-A.

THE COURT: I know. You are talking about 14-A documents generally or this specific document?

MR. DITKOWSKY: This specific document.

THE COURT: Reframe your question.

MR. DITKOWSKY: All right.

BY MR. DITKOWSKY:

Q You testified on direct examination that you made changes on Exhibit 14-A, isn't that correct?

A Yes.

Q At how many different times did you make changes on No. 14-A?

MS. MOSELEY: Objection, your Honor.

THE COURT: Overruled. She may answer.

THE WITNESS: How many different times?

MR. DITKOWSKY: Yes.

THE COURT: Did you make these changes at one sitting or different times?

relative to some of the changes on 14 a . Plaintiff contends that Westley Parsons made changes on the documents also. 402

THE COURT: No, she may answer.

THE WITNESS: What was the question again?

THE COURT: Were they both ballpoint pens?

THE WITNESS: No, it doesn't seem so.

THE COURT: You don't think so?

THE WITNESS: No.

MR. DITKOWSKY: N.B. on pages 401 and 402 the witness testified that the changes were made on one visit.

Q I call your attention to the scratching on question No. 2, and I ask you if you used the same pen to scratch the answer to No. 2 as you used to write in the margin of the document, the right-hand margin of the document?

A The same pen was used on the data that appears on: Date of Application and on Mexican Nationality, but it is not the same as the one used to cross out the word "yes" and to write "no."

Q Are they both the same color as well?

A They are the same color.

Q Now, in examining 14-A, did you on one occasion print and on another occasion use handwriting?

A Yes.

Q And is it your testimony that the memorandum on the right-hand side of 14-A is in your handwriting? Is that correct?

A Here where it says "Mexican Nationality"? Yes, that is my handwriting.

Modius operanti of the defendant in allowing a Mexican National the right to make decisions of American citizenship 403

Q And the word "over" is in your handwriting?

A Right.

Q Now, if we turn to the page labeled 4, is this also your handwriting?

A Yes, this was also my handwriting.

Q And if we refer you to the answer to Paragraph 6(d), you used two pens in that answer, is that correct?

A Which one is it?

Q Here (indicating).

A Yes.

Q And you did this all at one sitting?

A To the best of my recollection.

Q Do you have any other recollection?

A No.

Q Is there anything that will refresh your recollection?

A No.

Q Now, when you saw this document, 14-A, did you bring its contents to the attention of your immediate supervisor, Mr. Parsons?

A No, I did not.

Q Why did you not?

A I don't know.

Q Did you read the portions that you struck out?

A Probably, yes.

Q You say "probably, yes"?

A Yes.

Q Would you have stricken something out that you didn't read?

A No, that is why I said "probably yes."

Q Okay. What did you do when you read the words:

words stricken from 14 a "I do not consider that what I have done is an overt act. However, that is what I have been told by the American Consulate Officer in Monterrey, Mexico."?

A Nothing specifically on that sentence.

Q Did you ask Mr. Terrazas what had been told him?

A I don't remember. (witness signed an affidavit on this subject denying that Parsons told P1 similar words)

Q When you read words to the effect that Mr. Terrazas said:

"I didn't consider myself to be a lawbreaker."

Did you ask Mr. Terrazas what he meant by that?

A I do not remember.

MS. MOSELEY: Objection, your Honor.

THE COURT: Overruled.

MS. MOSELEY: I object to the statement characterized by counsel.

THE COURT: Overruled.

MR. DITKOWSKY:

Q When you read words to the effect of Mr. Terrazas

swearing allegiance to a foreign country."

Q When you read the words "I didn't realize at the time," what did you do?

A Nothing that I remember.

Q Did you call it to Mr. Parsons' attention?

A No, I did not.

Q Weren't you concerned that this individual may not have taken a voluntary oath of allegiance to Mexico?

MS. MOSELEY: Objection, your Honor.

THE COURT: Overruled. She may answer.

THE WITNESS: Please repeat the question.

MR. DITKOWSKY: Would the court reporter read the question back?

THE COURT: Weren't you concerned that Mr. Terrazas had not taken a voluntary oath of allegiance to Mexico? Did that occur to you?

THE WITNESS: It did not.

THE COURT: It didn't raise anything in his actions?

THE WITNESS: I don't remember.

THE COURT: Was there anything in his actions or conversations with you, either with you or in the presence of Parsons, in which Mr. Terrazas said or inferred by any language he used that he was forced to do anything in connection with the statements?

THE WITNESS: No.

that.

Did you do anything when you read:

"I didn't believe that I was committing any overt or treasonable act against the United States."

Did you do anything when you saw that?

A Not that I remember.

Q Did you give these documents to Mr. Parsons?

A Yes, I did.

Q And did he have them in his official capacity as a Consular Official of the United States of America?

A Yes.

MS. MOSELEY: Your Honor --

BY MR. DITKOWSKY:

Q Are there any marks on the document referred to as 14-A in red that you did not place on there?

MS. MOSELEY: Your Honor, before the witness answers the question, counsel has just asked a question of her with regard to a statement in Exhibit 15 that is not in that document anywhere.

THE COURT: It isn't?

MS. MOSELEY: No.

MR. DITKOWSKY: There was testimony. We had it at the deposition.

THE COURT: You are talking about the original. I

A I don't remember.

THE COURT: Do you recall calling Mr. Parsons' attention to anything in this document at all?

THE WITNESS: No, sir.

THE COURT: All right; that covers the whole gamut of it.

MR. DITKOWSKY:

Q Now, is it true that Mexico has abolished the oath for obtaining Certificates of Mexican Nationality?

A Which oath?

Q The oath that one stands before an official and raises his hand to God and swears allegiance?

A Yes.

MS. MOSELEY: Objection.

THE COURT: Overruled.

Apparently, you struck out from one of these documents the oath of allegiance.

THE WITNESS: The oath of allegiance to the United States.

BY MR. DITKOWSKY:

Q That was the United States?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. DITKOWSKY:

Q Now, what is the procedure for obtaining a Certifi-

Note: I Ibarra dict. 1 cert. of loss how to obtain cert/Nat. 1/17

Q Yes.

A I don't know for sure.

Q Does he have to sign for the document?

A He has to apply for the document.

Q At the Ministry of Foreign Affairs?

THE COURT: She says she doesn't know. Put another question to her.

BY MR. DITKOWSKY:

Q Prior to typing up the Certificate of Loss of Nationality which you sent to the State Department along with the accompanying exhibits, at any time did you discover that Mr. Terrazas had raised his right hand and took an oath of allegiance to the Republic of Mexico?

MS. MOSELEY: Objection.

THE COURT: If she knows, she may answer.

THE WITNESS: I don't know.

BY MR. DITKOWSKY:

Q What is your answer?

A I don't know.

Q Did you make any inquiry of any person to determine if Mr. Terrazas had raised his right hand and taken an oath of allegiance to the Republic of Mexico?

A No, I did not.

Q Did you make any inquiry subsequent to the issuance of the Certificate of Loss of Nationality?

A I believe at some time later, we requested the Embassy to obtain confirmation of this, but I'm not sure of it.

Q When did Mr. Terrazas raise his right hand and swear allegiance to the Republic of Mexico?

MS. MOSELEY: Objection.

THE COURT: If she knows, she may answer.

THE WITNESS: I don't know.

BY MR. DITKOWSKY:

Q Now, I show you Exhibit 15 -- have you exhausted your recollection on the procedure for obtaining a Certificate of Mexican Nationality?

A I don't know what you mean by "exhausted"?

Q Do you have any other information on the obtaining of a Certificate of Mexican Nationality, other than what you have testified to in court?

A Would you repeat the question, please?

THE COURT: Do you want to add anything to what you explained as to the manner in which this application was made? Just a few minutes ago, you told us what you thought one had to do to get the application. Did you tell us all that you think he had to do?

THE WITNESS: Yes.

THE COURT: All right. Do you want to refresh your recollection about something? Go ahead and do it.

Q Did you inform the Department of State that Mr. Terrazas was surprised when you told him that he allegedly expatriated himself?

A To the best of my recollection, I did not.

Q Did you inform the Secretary of State that Mr. Terrazas believed that he had committed an overt act of treason?

MS. MOSELEY: Objection, your Honor. Object to the form of the question.

THE COURT: He may answer.

THE WITNESS: No, I did not inform the Department of State of that fact.

BY MR. DITKOWSKY:

Q Did you inform the Department of State that Mr. Terrazas believed that because he obtained the Certificate of Mexican Nationality he could no longer go home to his family?

A No, I had no reason.

Q Did you call Mr. Terrazas' school to find out if they required a Certificate of Nationality for a diploma?

MS. MOSELEY: Objection, your Honor.

THE COURT: He may answer.

THE WITNESS: No, I did not.

BY MR. DITKOWSKY:

Q Did you inquire of Mr. Terrazas why he applied

BY MR. DITKOWSKY:

Q Did you immediately upon learning of the mistake in your interrogatory try to contact the U. S. Attorney to correct your answer?

A Immediately? No, I didn't.

Q Now, did you find that Mr. Terrazas committed any other expatriating act besides allegedly taking an oath of allegiance to the Republic of Mexico?

A No, I didn't.

Q And you didn't make any recommendation that he had committed any other expatriating act, is that correct?

A I would like to see the FS-176S which is my recommendation.

Q Well, of your recollection now after testifying and seeing it this morning, is your recollection that you found no other expatriating act?

A I would like to see the 176. To the best of my knowledge, the Certificate of Mexican Nationality is the only expatriating act that we brought forth in this case.

Q And Mr. Terrazas did not in your presence renounce his American citizenship, is that correct?

A No, he did not.

Q And when you investigated, did you find that Mr. Terrazas had voted in a Mexican election?

MS. MOSELEY: Objection, your Honor.

THE COURT: He may answer.

THE WITNESS: I don't know whether Mr. Terrazas voted in a Mexican election or not.

BY MR. DITKOWSKY:

Q Do you know if Mr. Terrazas served in the Mexican Army?

A I have no knowledge whether Mr. Terrazas served in the Mexican Army or not.

Q Do you know if Mr. Terrazas held political office?

A. I have no knowledge of whether Mr. Terrazas held political office in Mexico or not.

Q Did you make inquiry?

A To the best of my recollection, at the time we initially documented this case, we did not make inquiries into those matters.

Q Did you talk to anyone other than Mr. Terrazas?

A When we initially documented this case? When did we talk?

Q Prior to sending in a recommendation that Mr. Terrazas had expatriated himself?

A No.

Q Did you contact Attorney Rebollar?

A Who?

Q Rebollar.

MS. MOSELEY: Objection.

RELATIVE TO TAKING OF AN OATH

A In my opinion, on the FS-176, that is essentially what I said. The opinion that you have got there, written, will tell you exactly what I said.

Q Now, Mr. Witness, do you know what an oath is?

A An oath?

Q Yes.

A I believe that I do, yes.

Q Did the Clerk of this Court when he swore you in to tell the whole truth and nothing but the truth give you a proper oath?

A I believe that he did, yes.

Q And when you subscribe a document, do you give an oath in the same manner?

A A little differently. You ask the person to solemnly swear, you know, and so forth, yes.

Q You have him raise his hand to God to tell the truth?

A Yes.

Q And an oath requires someone to give that oath, isn't that correct?

A An oath under American law requires that type of thing. It may not operate that way in a foreign jurisdiction, and, in fact, it does not.

Q Now, in point of fact, in Mexico, they have abolished the oath, isn't that correct?

A No.

MR. DITKOWSKY: May I have your Exhibit 32, please?

BY MR. DITKOWSKY:

Q I want to ask you if you ever saw Exhibit 32 before?

A No, I did not.

Q What is Exhibit 32?

MS. MOSELEY: Objection. The witness has answered that he has never seen the document before.

THE COURT: He can identify it from looking at it, and identify it.

THE WITNESS: This appears to be an application for someone who wishes to apply for a Certificate of Mexican Nationality, a copy of one.

BY MR. DITKOWSKY:

Q Do you see anybody's signature on there that you recognize?

A I don't know whose signature is on this document. I have no way of knowing.

Q Now, Mr. Witness, did you examine the Application for Certificate of Mexican Nationality that promulgated the Certificate of Nationality that Mr. Terrazas allegedly showed you?

A No, I did not.

Q You did not?

A I did not.

Q Well, let me ask you this: Did Mr. Terrazas appear to sign the Certificate of Mexican Nationality?

A The Certificate of Mexican Nationality does not have Mr. Terrazas' signature on it to my knowledge. I do not believe it is on it. His photograph is attached.

Q Then you as a matter of your own personal knowledge have no knowledge whether Mr. Terrazas took an oath at any time, do you?

A It is my understanding that a Certificate of Mexican Nationality --

Q That is not my question, sir. I would like you to answer my question.

Do you of your own knowledge know that Mr. Terrazas took an oath to the Republic of Mexico?

A Yes.

Q All right; in front of what officer did he take an oath?

A The laws of the Republic of Mexico --

Q Sir, I wish you would answer the question.

THE COURT: No, he may answer the question.

THE WITNESS: -- do not require him to make the oath in front of an officer.

MR. DITKOWSKY: Your Honor, I ask that he be directed to answer the question.

DEPARTMENT OF STATE

APPLICATION FOR ☐ PASSPORT ☒ REGISTRATION

(Use additional sheets when space provided is not adequate)

POST LOCATION: Monterrey, Mexico

POST ACTION

PASSPORT ISSUED
No.
Date
Expires
☐ $1 Application fee collected
☐ $9 Fee collected
☐ No Fee passport
☐ Official passport

REGISTRATION APPROVED
Date
Expires
CARD (CERT.) OF IDENT. & REG.
No.
Date
☐ $1 fee collected (for card or cert.)
☐ 48-page passport

A — TO BE COMPLETED BY ALL APPLICANTS

I Laurence James Terrazas (First name) (Middle name) (Last name), a citizen of the United States, do hereby apply for a passport (registration)

DATE OF BIRTH (Month / Day / Year)	PLACE OF BIRTH (City, state/province, country)		
Dec 13 '47	Takoma Park, Md., U.S.A.		
HEIGHT	COLOR OF HAIR	COLOR OF EYES	SOCIAL SECURITY NO.
5 Ft. 10 In.	brown	brown	355-38-6165
VISIBLE DISTINGUISHING MARKS		OCCUPATION	
none		Bus. Admintr.	

MY LAST PASSPORT WAS OBTAINED FROM (Note: If included in another's passport, state name of bearer)
Location of Issuing Office: —
Date of Issuance:
Bearer:
Number:
☐ Submitted herewith
☐ Seen and returned
☐ Other disposition (State)

MY LAST REGISTRATION AS A CITIZEN OF THE UNITED STATES WAS APPROVED
Location of Registering Office: —
Date of Registration:

NOW RESIDING AT: Mexico
Guayana Holandesa 331, Mtry., N.L.
PERMANENT RESIDENCE (Street address, city, state, U.S. ZIP Code) (If same as above, write "Same")
8036 N. Merrill, Niles, Illinois 60648
IN THE EVENT OF DEATH OR ACCIDENT NOTIFY (Name in full, relationship, street address, city, state)
Mrs. LaVerne Terrazas (mother) 8036 N. Merrill, Niles, Ill. 60648

HAVE YOU EVER BEEN REFUSED A PASSPORT OR REGISTRATION AS A CITIZEN OF THE UNITED STATES? ☐ Yes ☒ No
IF ANSWER IS "YES", EXPLAIN WHEN AND WHY

B — TO BE COMPLETED BY AN APPLICANT WHO BECAME A CITIZEN THROUGH NATURALIZATION

I IMMIGRATED TO THE U.S.	I RESIDED CONTINUOUSLY IN THE U.S.	NATURALIZATION CERTIFICATE NO. ☐ Submitted herewith ☐ Seen and returned ☐ Previously submitted	DATE NATURALIZED
PLACE NATURALIZED (City, state)		NATURALIZATION COURT	

C — COMPLETE ONLY IF OTHERS ARE TO BE INCLUDED IN PASSPORT OR REGISTRATION AND SUBMIT GROUP PHOTOGRAPH

(WIFE'S) (HUSBAND'S) FULL LEGAL NAME	☐ NATIVE BORN ☐ NATURALIZED	NATURALIZATION CERTIFICATE NO. ☐ Seen and returned	DATE NATURALIZED
PLACE NATURALIZED (City, state)		NATURALIZATION COURT	

NAME IN FULL OF CHILDREN INCLUDED	PLACE OF BIRTH (City, state/province, country)	DATE OF BIRTH (Month, day, year)	RESIDED IN U.S. (From-
	PASSPORT OFFICE DEC 14 1971		

D — EVIDENCE OF PRIOR DOCUMENTATION OF ABOVE-NAMED PERSONS TO BE INCLUDED (For completion by Consular Office)

NAMES	PASSPORT NO.	DATE OF ISSUE	CANCELLED OR OTHER DISPOSITION	DATE OF REGISTRATION OR BIRTH REPORT	LOCATION OF OFFICE
			RECEIVED DEC 16 1971		

E — OTHER EVIDENCE OF U.S. CITIZENSHIP PRESENTED (State disposition)
SEE FS-1765
PASSPORT OFFICE PT/FNS

FORM FS-176 (OVER - YOU MUST COMPLETE PAGE 2) FORM APPROVED BUDGET BUREAU NO. 42-

FORM APPROVED BUDGET BUREAU NO. 42-

DEPARTMENT OF STATE

SUPPLEMENTAL APPLICATION STATEMENT TO BE COMPLETED AS REQUIRED BY CONSUL

☒ First Time Applicant
☒ Referred to Department for Decision
☐ Marriage Prior to March 3, 1931
☐ Resided Outside United States Over 10 Years Since Last Application

(First name) (Middle name) (Last name)

I Laurence James Terrazas a United States citizen, do solemnly swear (affirm) to the following statements.

I CEASED TO RESIDE IN THE UNITED STATES ON OR ABOUT	I DEPARTED FROM THE UNITED STATES ON (Date)
May, 1968	May 13, 1968
I DEPARTED BY ☒ Auto. ☐ Ship ☐ Airline — NAME OF SHIP OR AIRLINE COMPANY	PLACE OF DEPARTURE
I left in my father's car	Laredo, Texas
I HAVE SINCE RESIDED IN THE FOLLOWING COUNTRIES	I AM NOW RESIDING IN (Name of country)
Mexico	☒ Permanently ☐ Temporarily

MY REASONS FOR SUCH FOREIGN RESIDENCE ARE:
I have been studying in Mexico (business administration). I graduated in June, 1971. I am working here and plany to marry in a year.

DATA ON BROTHERS AND SISTERS, LIVING AND DECEASED

NAME	DATE AND PLACE OF BIRTH	PRESENT ADDRESS
Miss Constance E. Terrazas	March 16, 1951 Chicago, Ill.;	8036 N. Merrill St., Niles, Ill. 60648

IF ANY BROTHERS AND/OR SISTERS HAVE APPLIED FOR A PASSPORT OR REGISTRATION, FURNISH FOLLOWING INFORMATION

NAME	DATE OF APPLICATION	PLACE OF APPLICATION
none		

OTHER REFERENCES IN THE UNITED STATES

NAME	ADDRESS
Miss Dorothy Wootton	6959 N. Ridge Blvd., Chicago, Ill.
Mrs. Irene Schliephake	3836 N. Troy St., Chicago, Ill.

SCHOOLS ATTENDED IN THE UNITED STATES

NAME	ADDRESS	PERIOD OF ATTENDANCE
T. Jefferson Grammar School	Park Ridge, Ill.	1953-1959
East Maine Twp. High School	Park Ridge, Ill.	1961-1965
University of Illinois, Chicago Circle,	Chicago, Ill.	1965-1968

BAPTISMAL DATA: First Methodist Church of Park Ridge (Ill.) 1959

MARRIAGE PRIOR TO MARCH 3, 1931

The following section is to be completed by a woman applicant (or a wife to be included in a passport or registration) who, (1) was previously married before March 3, 1931, and (2) has not been issued or included in a United States passport or registration as a United States citizen abroad since March 3, 1931.

PREVIOUS MARRIAGE TERMINATED BY ☐ Death ☐ Divorce	DATE TERMINATED
NAME OF FORMER HUSBAND (First, middle, last)	PLACE OF HIS BIRTH (City, state)

IF FORMER HUSBAND WAS BORN OUTSIDE OF THE UNITED STATES, COMPLETE ONE OF THE FOLLOWING:

☐ HE WAS NATURALIZED AS A U.S. CITIZEN ON	PLACE (City, state)	NATURALIZATION CERTIFICATE NO.

☐ HE OTHERWISE ACQUIRED U.S. CITIZENSHIP AS FOLLOWS

☐ FORMER HUSBAND WAS NOT A U.S. CITIZEN

I have read (had read to me) (language) the contents of this application and I swear that I understand the statements contained herein. ENGLISH

Laurence James Terrazas
(Signature of Applicant)

FATHER'S NAME: Carlos Mariano T[illegible]ma Navarro
FATHER'S COUNTRY OF BIRTH: Mexico
[ ] U.S. CITIZEN [X] NOT U.S. CITIZEN
DATE NATURALIZED: no
PLACE NATURALIZED (City, state):
FATHER'S DATE OF BIRTH: July 10, 1903
[X] FATHER DECEASED [ ] FATHER RESIDING AT
FATHER RESIDED IN U.S. From 1944 To 1970
MOTHER'S MAIDEN NAME: LaVerne Genevieve Wootton
MOTHER'S COUNTRY OF BIRTH: U.S.A.
[X] U.S. CITIZEN [ ] NOT U.S. CITIZEN
DATE NATURALIZED: U.S. birth
PLACE NATURALIZED (City, state):
MOTHER'S DATE OF BIRTH: Sept. 28, 1925
[ ] MOTHER DECEASED [ ] MOTHER RESIDING AT
MOTHER RESIDED IN U.S. From always To
[X] I WAS NEVER MARRIED [ ] I WAS LAST MARRIED ON (Date)
PRESENT FULL LEGAL NAME OF HUSBAND OR WIFE: none
HUSBAND'S OR WIFE'S PLACE OF BIRTH (City, state)
HUSBAND'S OR WIFE'S DATE OF BIRTH
[ ] HUSBAND OR WIFE IS U.S. CITIZEN [ ] HUSBAND OR WIFE IS NOT U.S. CITIZEN
HUSBAND OR WIFE NOW RESIDING AT
[ ] MARRIAGE NOT TERMINATED
[ ] MARRIAGE TERMINATED BY [ ] DEATH [ ] DIVORCE ON

PROPOSED TRAVEL PLANS

[X] I INTEND TO RETURN TO THE UNITED STATES WITHIN 6 MONTHS ____ YEARS TO [ ] RESIDE [X] VISIT. [ ] INDEFINITE
[ ] I NEVER INTEND TO RETURN TO THE UNITED STATES
I INTEND TO CONTINUE TO RESIDE ABROAD FOR THE FOLLOWING REASON
I am living and working in Monterrey, N. L. Mexico and plan to get married within a year.

COMPLETE IF RETURNING TO U.S.
PORT OF DEPARTURE
DATE OF DEPARTURE
NAME OF SHIP OR AIRLINE

WARNING: Travel to or in countries or areas for which the passport is not valid will result in the withdrawal of passport facilities and may result in prosecution under Section 1544 of Title 18, United States Code.

False statements made knowingly and willfully in passport applications or in affidavits or other documents submitted therewith are punishable by fine and/or imprisonment under the provisions of 18 USC 1001 and/or 18 USC 1542. 18 USC 1543 provides for a fine and/or imprisonment for the alteration or mutilation of a passport issued pursuant to this application. 18 USC 1544 provides for a fine and/or imprisonment for the use of a passport in violation of the restrictions therein.

I have not (and no other person included in the application has), since acquiring United States citizenship, been naturalized as a citizen of a foreign state; taken an oath or made an affirmation or other formal declaration of allegiance to a foreign state; entered or served in the armed forces of a foreign state; accepted or performed the duties of any office, post, or employment under the government of a foreign state or political subdivision thereof; made a formal renunciation of nationality either in the United States or before a diplomatic or consular officer of the United States in a foreign state; ever sought or claimed the benefits of the nationality of any foreign state; or been convicted by a court or court martial of competent jurisdiction of committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the United States or conspiring to overthrow, put down or to destroy by force, the Government of the United States.

(If any of the above-mentioned acts or conditions have been performed by or apply to the applicant, or to any other person to be included in the passport or re[illegible] strike out the portion which applies should be struck out, and a supplementary explanatory statement under oath (or affirmation) by the person to whom the portion is applicable should be attached and made a part of this application.)

I solemnly swear (or affirm) that the statements made on all the pages of this application are true and that the photograph attached is a likeness of me and of those persons to be included in the passport.

OATH OF ALLEGIANCE

XXXX

Plaintiff's Birth Certificate. Note that it clearly indicates the correct name of his place of birth. No American educated individual would insist that plaintiff was born in MONTGOMERY. A Mexican Lawyer however in the employ of a senior Mexican Offiçal such as Uncle Jorge would be inclined to refer to Takoma Park in the manner that legal documents in Mexico would refer to a Mexican town.

MARYLAND STATE DEPARTMENT OF HEALTH
Bureau of Vital Statistics, 2411 N. Charles Street, Baltimore
CERTIFICATE OF LIVE BIRTH

25162

Reg. Dist. No. 223

NAME OF CHILD: Terrazas, Laurence James

4. DATE OF BIRTH: December 13, 1947
5. Sex: M
6. Number months of pregnancy: full term
7. Twin or other? single
7(a) If so-born 1st, 2d, 3d
8. Hour of birth 2:37 P.M.

PLACE OF BIRTH:
2. USUAL RESIDENCE OF MOTHER:
Montgomery
Takoma Park
Washington Sanitarium & Hospital
3 days
State D. C.
County
City or town Washington
Street No. 1211 Staples St., N.E.

FATHER OF CHILD
Name Carlos Terrazas (no middle name)
White
11. Age at time of this birth 44 yrs.
18. Birthplace Chicago, Ill.
19. Usual occupation Secretary
20. Industry or business Translator

MOTHER OF CHILD
15. Full maiden name LaVerne Genevieve Wootton
16. Color White 17. Age at time of this birth 22 yrs.
18. Birthplace Chicago, Ill.
22. Mother's name and address for mailing registration notice: Mrs. Carlos Terrazas (as above)

7(a) If so-born 1st, 2d, 3d: 0
Total other children born alive but now dead? 0
Total other children born to this mother 0

I hereby certify to the birth of this child, who was born alive on the date and hour stated above. The information given was furnished by Mr. Carlos Terrazas, related to this child as father.

Actual signature: Z. Frances Murphy M.D.
Attending physician ☐ Midwife ☐ Registrar ☐
Address Takoma Park 12, Md.
Date signed 12-14-47

Filed for record in the Office of the Registrar DEC 19 1947
Name added by State Registrar per

I HEREBY CERTIFY THAT THIS ATTACHED IS A TRUE COPY OF A RECORD CREATED THAT THIS OFFICE IN THE DIVISION OF VITAL RECORDS ON

SEAL IMPRESSED WITH RAISED SEAL

DATE ISSUED: OCT 8 1971

DIVISION OF VITAL RECORDS — CHIEF

WARNING: It is illegal to duplicate this copy by photostat or photograph.

DEPARTMENT OF STATE
FOR SERVICE OF THE UNITED STATES OF AMERICA

CERTIFICATE OF LOSS OF NATIONALITY OF THE UNITED STATES

This form is prescribed by the Secretary of State pursuant to Section 501 of the Act of October 14, 1940 (54 Stat. 1171) and Section 358 of the Act of June 27, 1952 (66 Stat. 272).

DEPARTMENT USE ONLY
DEPARTMENT OF STATE
DEC 21 1971 (Date)
CERTIFICATE APPROVED
Frances G. Knight
Director, Passport Office
By

Consulate General of the United States of America

at Monterrey, Mexico ss:

I Wesley H. Parsons (Name)

hereby certify that, to the best of my knowledge and belief,

Laurence James Terrazas (Name)

was born at Takoma Park (Town or City), Montgomery (Province or County)

Maryland (State or Country), on December 13, 1947 (Date).

That he (~~was~~) resided in the United States, 1947-May 1968.

That he resides at Guayana Holandesa 331, Monterrey, Mexico;

That he acquired the nationality of the United States by virtue of birth in the United States of America;

That he acquired the nationality of Mexico by virtue of birth in the United States of a Mexican father;

That he took an oath of allegiance to Mexico, a foreign state, in connection (The action causing expatriation should be set forth succinctly) with his application for a Certificate of Mexican nationality.

That he thereby expatriated himself on April 3, 1971 under the provisions of Section 349(a)(2) of (~~the Nationality Code~~) the Immigration and Nationality Act)*.

That the evidence of such action consists of the following:

Documents listed below.

NOTE DATE !!

That attached to and made a part of this certificate are the following documents or copies thereof: (1) Affidavit executed by Mr. Terrzas on Nov. 15, 1971. (2) Copy of Certificate of Mexican Nationality No. 1962.

In testimony whereof, I have hereunto subscribed my name and affixed my office seal this 7th day of December, 19 71

(SEAL)

FILE
Copy I.N.S.
Copy CON.

Wesley H Parsons (Signature)
Wesley H Parsons
Vice Consul of the United States of America (Title)

* Strike out inapplicable item.

FS-348

EXERPTS FROM FOREIGN AFFAIRS MANUAL WHICH PARSONS USED.

224.13 Admitting Act of Expatriation in Questionnaire

If the person admits in the questionnaire the commission of an act of expatriation but alleges facts which, if established, might be regarded as proof that the act was performed involuntarily, the officer should advise him concerning evidence which he might endeavor to obtain to substantiate his allegation.

224.14 Application for Passport or for Registration

The Department desires, if possible, that an application for a passport or for registration be taken from every person not currently documented who visits or communicates with a consular office with a view to ascertaining his nationality status or of obtaining documentation as an American national, even though the officer handling the case believes that he has lost the nationality of the United States.

224.15 Surrender of Naturalization Certificate

An officer of the Foreign Service in submitting a certificate of expatriation or a certificate of loss of nationality shall endeavor to persuade the person concerned to surrender his naturalization certificate for transmission to the Department with such certificate.

224.16 Statement Regarding Legal Provision Resulting in Loss of Nationality

The exact provision of law under which United States nationality was lost shall be given in the certificate of loss of nationality. (See Exhibit 224.1(p.4), item 7.) Statements should not be made indicating that nationality was lost under more than one section of law.

224.17 Foreign Service Statement Regarding Credibility of Person Involved and Evidence

The officer shall, in every case, express his opinion of the credibility of the applicant and the evidence.

224.18 Certificates and Documents Not To Be Submitted Without Signature and Seal of Consular Officer

Reports made pursuant to section 340(d) of the Immigration and Nationality Act, renunciations of United States nationality, and oaths of repatriation taken for the purpose of regaining United States nationality, must bear the signature and seal of the consular officer. Copies of such documents are transmitted to the Department of Justice. Reproduced copies on paper which will not adequately show the signature and seal, such as copies made by ozalid reproduction, are therefore not acceptable.

224.19 Policy to be Followed in Determining Loss of Nationality

a. General Principles and Procedures in Loss of Nationality Cases

Rights and privileges of nationality in the United States are to most persons their most valuable assets and should not be taken away from them except upon clear and convincing evidence that they have performed acts or fulfilled conditions resulting in the loss of such rights and privileges. As was said by the Supreme Court of the United States in the case of Perkins et al v. Elg (307 U.S. 325 (1939), "Rights of citizenship are not to be destroyed by an ambiguity."

It should be borne in mind that all of the acts and conditions resulting in expatriation under the laws of the United States clearly imply their voluntary performance or fulfillment. Subsection (b) of section 349 of the Immigration and Nationality Act provides that when a person is a national of a country and has been physically present therein for 10 years and thereafter performs in the country any of the acts of expatriation enumerated in subsection 349(a) of the Act he "shall be conclusively presumed to have done so voluntarily and without having been subjected to duress of any kind." (For a discussion of section 349(b), see Interpretations, section 225.10.)

The presumption raised by section 349(b) of the Act has no application to cases in which the acts were performed voluntarily but without knowledge of the individuals' United States citizenship. (See section 223.8, Interpretations.) Aside from cases involving lack of knowledge caused by misinformation or act of the Department, the application of this principle is restricted to first-time applicants, when the information furnished by the individual raises the issue of lack of knowledge. The applicant may state specifically that he did not know he had a claim to citizenship, or the information furnished may indicate that fact. If the information indicates the possibility of lack of knowledge of U.S. citizenship prior to the performance on an act of expatriation, the matter should be explored thoroughly and the facts definitely determined at that time.

In each case in which an applicant alleges lack of knowledge of United States citizenship, he should be required to submit evidence showing that he has been documented as a citizen of a foreign country for a reasonable time prior to his current application.

Since the evidence of lack of knowledge is intrinsically subjective, it rests primarily on the credibility of the statements of the applicant. Consular officers should question each applicant carefully to adduce all relevant facts. If the officer is satisfied that the claim is bona fide, he should state this fact specifically in his opinion. If the interrogation develops facts which cast doubt upon the bona fides of the claim to lack of knowledge of citizenship, a full report should be submitted covering the facts which give rise to the doubt.

Understanding and thoroughness are required in handling each case involving the question of nationality of the United States in order that an injustice may not be done to an individual by the Department or that it may not generally be considered that justice can be obtained only by resorting to legal action. At the same time, diligence should be exercised in any such case in order to prevent, as far as may be possible, the perpetration of fraud upon the Department or the Federal courts in the United States in nationality cases by persons who voluntarily performed an act or fulfilled a condition penalized by the laws of the United States by loss of nationality.

b. Procedure for Handling Applications for Nonimmigrant Visas by Persons Who May Have Claim to U.S. Citizenship

(1) Persons Who Do not Wish to Pursue Such Claim

Notwithstanding the general policy set forth above, the question of possible possession of United States citizenship by an applicant for a nonimmigrant visa, which cannot be decided on the basis of information and evidence at hand, need not be resolved in cases where the applicant does not wish to have his status clarified. In such cases consular officers should be satisfied that the applicant has established bona fide nonimmigrant status, apart from the question of a possible claim to United States nationality (9 FAM 22 CFR 41.25, Notes 1 and 2).

The President of the United States has specifically requested the Department to expedite where practicable the issuance of nonimmigrant visas, and to encourage international travel consonant with the national interest. Posts sometimes find that visa applicants, who are generally prepared to travel immediately, are confused or resentful when informed that they cannot be issued a visa until the possibility of their possession of United States citizenship is resolved. The procedure usually necessitates the obtention of various documents and subsequent consideration of their cases by the Department, and several weeks may elapse before the applicants receive documentation to enter the United States.

This situation is particularly perplexing to applicants for nonimmigrant visas who often have no interest in pursuing a possible claim to United States citizenship. The applicants cannot understand why an intended visit of limited duration to the United States must be frustrated merely by the fact that they may possess United States citizenship.

These cases normally arise when information contained in a visa application indicates that the applicant has a possible claim to United States citizenship. Such applications are then referred by the Visa section to the Citizenship section for determination of the person's citizenship status. The following procedure is approved in such cases:

PROCEDURE THAT WAS REQUIRED TO BE FOLLOWED

224.7 Amplification of Certificate

When preparing a certificate of expatriation or certificate of loss of nationality the certificate shall be amplified in appropriate cases by adding a paragraph setting forth the names, places, and dates of birth, and present addresses of the spouses and children, if any, of the individual concerned and whether any such person is considered to have acquired foreign nationality. The certificate, however, is not to be regarded as a certificate of expatriation of the spouse or children of any person in whose case a certificate is prepared.

224.8 Additional Guides for Preparation of Certificate of Loss of Nationality

A certificate of loss of nationality must be complete in form and accurate in content. It should contain only statements which support the conclusion that the person has expatriated himself. When submitted it should incorporate all of the evidence of record which supports the action taken.

Information which tends only to be in derogation of the conclusion that the individual has expatriated himself, whether it is in an affidavit by the individual, in evidence which he submits, or in information submitted by the consular officer, is not to be attached to the certificate. Such information may be included with an application for passport or registration containing the consular officer's opinion, as specified in section 224.14, or submitted separately with an accompanying operations memorandum. All such information and evidence must be submitted for consideration in reaching a final decision on the certificate.

224.9 Preliminary Finding and Final Approval of Certificate

The initial determination by the Department on certificates or other reports of loss of United States nationality is termed a preliminary finding. The preliminary finding procedure is designed to provide full opportunity for persons who may have performed acts of expatriation to present additional information, evidence, legal arguments, or other reasons why they should not be held to have lost their United States nationality. It should be emphasized that these cases are not adversary proceedings. Every precaution must be taken to assure that the rights of the individual and the administration of the laws are scrupulously observed.

The procedure described below will reduce the number of (1) frivolous appeals, and (2) appeals based upon evidence which was available but not presented when the preliminary finding was made.

a. Preliminary Finding

When the Department determines that the available information and evidence indicates that a person may have lost his United States nationality by the performance of a certain act or acts, it will notify the post by operations memorandum that a preliminary finding to that effect has been made. (See exceptions to preliminary finding provisions in paragraph c.)

The post then writes to the person concerned as follows:

"Dear _____:

"In view of the provisions of United States law set forth below and the facts summarized in this letter, it appears you may have lost your United States nationality by certain acts you have performed. The purpose of this letter is to inform you that this question has arisen, and to give you an opportunity to present any evidence or arguments you may wish that bear on the question.

"Section (appropriate section) of the Immigration and Nationality Act reads as follows:

(Quote the section)

FORM LETTER REQUIRED TO BE GIVEN TO TP WHICH WAS NOT

W2

"The following facts indicate that the quoted provisions of the law may apply to you.

(Summarize the facts of the person's case leading to this conclusion).

"Your (describe act briefly, for example, voluntary naturalization in France) is regarded as highly persuasive evidence of an intent to relinquish United States nationality. The information presently of record relating to the surrounding circumstances, motives, and purposes of your act, does not appear sufficient to negate such intent. (If the act by itself is not considered highly persuasive evidence of an intent to relinquish United States nationality, but is accompanied by apparently persuasive evidence of an intent to transfer or abandon allegiance, change this paragraph accordingly. For example, 'your voluntary service in the armed forces of France performed under the circumstances previously noted is regarded as highly persuasive evidence of an intent to relinquish United States citizenship. The information presently' . . . etc.).

"In accordance with the established procedures you are free to submit to this (Embassy, Consulate) within 60 days from the date of this letter, for transmission to the Department of State, any additional information or evidence you believe should be considered in reaching a decision in your case.

"If you believe it will take longer than 60 days to gather such information or evidence you should so inform us. If we do not receive such information or evidence within 60 days, or, in lieu of that, a letter stating that such material will be submitted within a short time after the 60 days have elapsed, the Department of State's decision will have to be made on the evidence already available. I have been instructed to inform you that the evidence now available is of such a nature that under the law it is likely to result in a determination that you have lost the nationality of the United States unless that evidence is overcome by other evidence you may submit.

"You may wish to consult with your attorney concerning the evidence or information to be submitted. We would be pleased to transmit to the Department of State any information or evidence you may wish to present, including information on (points the post or Department may consider of special significance)."

The post may grant extensions beyond the 60-day period mentioned in the letter. The Department should be informed of each extension as it is given by transmission of a file copy of the post's letter granting the extension. The copy should be initialed by the consular officer.

Any additional information or evidence submitted by the subject in response to notice of the preliminary finding should be sent to the Department, together with the consular officer's evaluation of the new information or evidence.

If the subject, by the end of the 60-day period, has not responded to notice of the preliminary finding, submit the case to the Department with a statement to that effect. The initialed file copy of the letter giving notification of the preliminary finding is to be forwarded to the Department in each case. Unless there is reason to believe the subject did not receive the post's letter, or that a reply to the letter will soon be received, the Department will make its decision on the available information and evidence.

If, upon completion of the preliminary finding procedures, the officer considers that a final determination of loss is warranted, he submits a certificate of loss of nationality, or of expatriation, unless he has already done so. If the information or evidence obtained during the preliminary finding procedure reveals that the certificate previously submitted is defective, for any reason, he submits a new certificate.

Whenever the officer decides that the certificate previously submitted should be disregarded, he notifies the Department and gives his reasons.

b. "Potentially Sensitive" Cases

(See section 224.2, Procedures.)

c. Exceptions to the Preliminary Finding Provisions

No preliminary finding will be made as a general rule in the following types of cases. Rather, a final determination of loss of nationality will be made and the certificate approved.

(1) Renunciation of United States nationality in the prescribed form.

W2

signed, and tell me whether any information on that document is not accurate and true information.

THE WITNESS: The address given as my residency in Mexico City is a place where I never lived.

THE COURT: Who lived there, if you know?

THE WITNESS: A brother of my father, Jorge Terrazas.

THE COURT: And was that the aunt that you made reference to --

THE WITNESS: No, your Honor.

THE COURT: -- where you said you lived?

THE WITNESS: No, I was living in Monterrey, Mexico, a thousand miles away from here.

THE COURT: All right, what else is inaccurate?

THE WITNESS: At the bottom, it says that I swore to this document on the 16th of November, 1970. That's an untrue statement because I never signed that document on that date.

THE COURT: Now, when you signed this document, in September, you say --

THE WITNESS: Yes, sir.

THE COURT: -- was there any written information on that document furnished by you?

THE WITNESS: No, sir, there was not.

THE COURT: What was on that original when you signed it?

THE WITNESS: The original was a form letter, just as that is, without any indications of my father's name, mother's name, address, or anything.

THE COURT: Any who gave this to you to sign?

THE WITNESS: My father did.

THE COURT: And what did he tell you?

THE WITNESS: He told me that I was signing a document necessary for me to get my diploma in Mexico.

THE COURT: Did you ask him what that document meant?

THE WITNESS: Yes, I did.

THE COURT: What did he tell you?

THE WITNESS: He told me: "Don't worry about it. Don't argue with me. Just sign it."

THE COURT: Now, did that document at that time contain the following language in Spanish?

Give him a copy of that. Have you got it in front of you?

THE WITNESS: No.

MS. MOSELEY: Here it is.

THE COURT: It is directed to the:

"Department of Foreign Affairs
Bureau of Legal Affairs
Nationality Division
T-l-a-t-e-l-o-l-c-o."

How do you pronounce that?

THE WITNESS: Tlatelolco, or something like that.

THE COURT: Tlatelolco?

THE WITNESS: Right.

THE COURT: "Tlatelolco, D.F. Re: Application for Certificate of Mexican Nationality."

Was that on there when you signed that document?

THE WITNESS: Yes, it was.

THE COURT: And you read it?

THE WITNESS: No, I didn't.

THE COURT: You didn't read the document at all in Spanish?

THE WITNESS: I didn't read it at all, sir.

THE COURT: You didn't read it at all?

THE WITNESS: I glanced at it, but that's it.

THE COURT: The first paragraph of that is in Spanish, and the translation I have. You have the document in front of you, and you tell me whether it is a literal translation.

"I hereby respectfully request that I be issued a Certificate of Mexican Citizenship on the basis of the facts confirmed by the attached documents and in accordance with the legal provisions applicable to the case."

Do you remember reading that on that document?

THE WITNESS: No, I don't, your Honor.

THE COURT: Would you say that you did not read it?

THE WITNESS: I would say that I don't remember

EXERPTS OF UNCONTROVERTED TESTIMONY RELATIVE TO EXECUTION OF ONE OF THE TWO APPLICATIONS.

MS. MOSELEY: The same document, Document No. 48.

THE WITNESS: Yes.

MS. MOSELEY: Yes, what?

THE COURT: Does that refresh your recollection?

MS. MOSELEY: Does that refresh your recollection?

THE WITNESS: It says I studied Spanish. I don't remember, your Honor.

MR. MOSELEY:

Q So by 1970, you were fluent in the Spanish language, isn't that correct?

MR. DITKOWSKY: Objection. It calls for a conclusion.

THE COURT: He may answer.

MS. MOSELEY:

Q You are fluent in the Spanish language, isn't that correct?

A I believe I have a fluency in that language, yes.

Q You signed an Application for Certificate of Mexican Nationality dated November 16, 1970, is that correct?

A No, that is not correct.

Q You did not sign a document dated November 16, 1970?

A I did not.

MS. MOSELEY: I would like the court reporter to mark this as Defendant's Exhibit No. --

Your Honor, the difficulty is that we have renumbered the documents, and they didn't follow the pretrial order,

THE COURT: And for the "Domicile" it gives the address:

"Parroquia 731-302, Colonia Del Valle, Mexico, D.F., Zone 12, Mexico."

Was that on there at the time?

THE WITNESS: It was not. However, if it had been, it would have been erroneous, because that was never my address.

THE COURT: But that was not on there?

THE WITNESS: That was not on there.

THE COURT: All right.

"Place and date of birth: Takoma Park, Montgomery County, Maryland, U.S.A., December 13, 1947."

Was that on there?

THE WITNESS: That was not on there.

THE COURT: (Reading):

"Father's name and nationality: Carlos Terrazas Navarro. Mexican."

Was that on there?

THE WITNESS: That was not on there.

THE COURT: (Reading):

"Mother's name and nationality: LaVerne Genevieve Wootton. American."

Was that on there?

THE WITNESS: That was not on there, but, once,

Q At the time that you signed this document, you understood the words, "I therefore hereby expressly renounce United States citizenship" even though it appears in Spanish?

A Carol, those words were not on there.

Q They were not on there on the original?

A Would you please repeat the question?

Q "I therefore hereby expressly renounce United States citizenship."

A Are you referring to Paragraph 2?

Q Paragraph 2, yes.

A The document that I signed did not give any specific nationality. It doesn't say "citizenship." It says "nationality."

Q But you understood the words, "I therefore hereby renounce --"

A Nationality.

Q "--nationality," and the state had to be filled in?

A It would have had to be filled in.

Q And you understood those words, even though they were in Spanish?

A As I so stated, Carol, I don't remember what was on the form. I don't remember if I read it, and I don't even know if I understood it.

Q Well, you were fluent enough in Spanish to have understood it, if you had read it?

John Christiansen and I were socializing. He wanted to know -- he was not asking any questions, trying to find anything that I was doing wrong. He only asked me about my status, what was I doing in Mexico? I told him I was going to school. I told him that I was working. Mr.Christiansen asked me if I was working as a resident American or if I --

Q So in other words, your answer is that you went there at the urging of Mr. Christiansen, is that right?

A Yes, sir. He advised me to go to the Consulate.

Q Had anybody prior to this time questioned your American citizenship?

A No, sir, they had not.

Q And had you traveled to the United States without any questions being asked as to whether you were a citizen or not?

A Yes, sir.

Q I show you a document that was originally in the Defendant's Pretrial Memorandum as Exhibit 23 which has not been produced. It will be our Exhibit LT-4, and I ask you, Mr. Witness, if you received the original of this letter?

A Yes, sir, I did.

Q Is that a true and correct copy of the letter?

A Yes, sir, it is.

Q Who is that letter from?

to this document? Were you present in the courtroom when Mr. Parsons testified to this document?

A Yes, I was. I was present when Mr. Parsons made his statement regarding this document, and I was present when Ms. Ibarra made her statement.

Q Now, this document was typed by you, is that correct?

A Yes, sir, it was.

Q And you did not make the corrections on this document, did you?

A No, sir, I did not.

Q Who made the corrections on this document?

A To the best of my recollection, large portions of paragraphs were stricken by Mr. Parsons. I do not remember if Mrs. Ibarra made any changes on here. I know she saw the document. I cannot ascertain at this moment, nor do I want to swear if she did or she did not make any changes.

Q But your recollection is that Mr. Parsons made them?

A My recollection is that Mr. Parsons made deletions of paragraphs. I do not know specifically which ones, nor do I know if he made any changes on the front part of the form where the questions are.

Q Did you object to any deletions?

Q Why did you not?

A . Because at that time, I was trying to help them get all of the documentation needed so that they could createthe file that they needed to create.

Q Why did you feel it necessary to create a file?

A Because I wanted to make sure that my position was clear, and I was trying to establish my status as an American citizen.

Q Did you have any intention of obtaining a Certificate of Loss of Nationality?

A No, sir, I did not.

Q Now, on the back of Page 3 of this document, you refer to a Consular Official. Will you identify the Consular Official you refer to?

A All of my transactions regarding these documents were handled between Mr. Parsons and Mrs. Ibarra. The Consular Official that I refer to is Mr. Parsons.

Q How did you get to the Consulate to begin with?

A I went to see Mr. Parsons on a Monday. I went to a party on a Saturday evening, a birthday party for one of the employees of the American Consulate in Monterrey.

During that time, I was socializing, talking to different officials of the American Government, different employees of the American Government. During my socializing, I met Mr. John Christiansen.

TESTIMONY OF APPELLEE RELATIVE TO HOW HE GOT TO THE CONSULATE AND WHAT WAS SAID TO HIM.

to the Republic of Mexico?

A .No, sir, I did not.

Q Now, Mr. Terrazas, you signed documents which have been presented in this court which say that you did sign an oath of allegiance to the Republic of Mexico. Can you explain why you signed those documents?

MS. MOSELEY: Objection, your Honor.

THE COURT: He may answer.

THE WITNESS: I was told by the Citizenship Officer of the American Consulate in Monterrey, Mexico, that by obtaining a Certificate of Mexican Nationality, I had sworn allegiance to Mexico.

THE COURT: Who told you that? What was the name of the man?

THE WITNESS: Mr. Wesley Parsons.

BY MR. DITKOWSKY:

Q And what else did he tell you?

A At that time, he asked me did I realize by taking this oath of allegiance to Mexico, that I was committing an overt act of treason against the United States.

Q And what did you tell Mr. Parsons?

A I told Mr. Parsons that I did not know I was committing any act against the United States, and as far as I was concerned I considered myself as a loyal American citizen.

Q Did you pay him a fee?

A I did not pay him a fee. My father paid him.

Q Did you know of his actions?

A I did not have the slightest idea of what he was doing in Mexico City.

Q Did you authorize Attorney Rebollar to appear for you and obtain a Mexican Birth Certificate?

A No, sir, I did not.

Q Did you authorize him to sign your name?

A No, sir, I did not.

Q Do you have Exhibit 32 here?

A No, when you first asked for it, I didn't have it.

Q All right. I show you a copy of Exhibit 32. The copy that has the number on it seems to have disappeared. I ask you to identify what that document is.

A It is an Application for Certificate of Mexican Nationality.

Q Now, I want you to look at the signature on that document, and I want to ask you a question about that signature.

A Yes, sir.

Q Is that your signature?

A No, sir, it is not.

Q Did you authorize anyone to sign your name to that?

A I did not.

U.S. fails to keep tabs on foreign student

By John Maclean

Chicago Tribune Press Service

WASHINGTON—In the wake of Atty. Gen. Griffin Bell's vow to deport Iranian students convicted of violence, the Justice Department has discovered record keeping so sloppy that the federal government doesn't know how many foreign students are in this country.

Partly as a result, thousands of foreign students, many of whom are not Iranians, face possible deportation, according to early results of the department's probe. The Immigration and Naturalization Service (INS), a Justice Department agency, faces a major shakeup.

INS figures show 323,000 foreign students in this country, of which 231,710 are "out of status," an INS term meaning they have overstayed their visas or cannot be located at schools they were to attend. Both conditions are grounds for deportation, as is conviction on a felony charge.

BUT THOSE figures do not include students who went home after the school year ended last spring, or those who arrived for the school year which began last fall. About 115,000 students come here each year from abroad.

Bell, who personally ordered the probe, was said to be "mad as a S.O.B." about INS inefficiency. Other Justice officials said INS records were so poor that they "don't even know what the size of the problem is."

When Bell ordered the check following a violent demonstration by Iranians in Beverly Hills, Cal., Jan. 2, it was found that INS computers had a backlog of 1 million pieces of information waiting to be fed into them.

INS records were more than six months out of date, the agency could not say how many students were in the country, and INS executives claimed they had so few inspectors they could not track down most visa offenders.

AS A RESULT, Bell ordered every INS district director to check by phone in his area with all the schools having foreign students in an effort to get current information.

Bell also ordered a spot check in the Los Angeles area where the Jan. 2 demonstration occurred. The files of 500 students there have been checked at random in a preliminary survey that showed 28.8 per cent out of status. Bell's spokesman, Terry Adamson, cautioned that could mean simply that a student has transferred from one school to another without notifying INS.

"The foreign student problem is clearly a significant contributor to the illegal alien problem," Adamson said.

"We think it is healthy to have a flow of foreign students in and out, but there is a notable problem if too many students overstay their visas."

THE INS has estimated there are about 36,000 Iranian students here. But the State Department has estimated the number as high as 50,000-60,000, many of whom are believed no longer attending classes.

Continued on page 16, col. 1

A spokesman for the INS, Verne Jervis, said that INS is so understaffed and its record keeping so poor that INS investigators do not work on individual cases. Jervis said that if a foreign student drops out of school, overstays his visa, and gets a job here, "the chances of his being caught are not very great." The 1,000 INS inspectors spend their time instead trying to track down businesses that employ large numbers of illegal aliens.

"We're operating out of 40 million manila folders all over the country," Jarvis said. "When someone applies for naturalization, we have to send for his paper file. We lose [track of] about 10,000 people a year who come into the country on tourist or student visas."

JERVIS SAID efforts to computerize information have been made but have advanced slowly. He acknowledged that human operators are about 6 months behind in feeding information into the computer bank.

After visiting the INS, Bell began considering the formation of a special task force to make recommendations on ways to unscramble the agency's managerial ills.

Following the anti-shah riot in Beverly Hills, in which 7 were arrested and 11 injured, Bell pledged to deport all Iranians guilty of violence in this country as fast as the law allows.

He also said he was partly to blame for past policy, which left the handling of the Iranians strictly to local police. He said he should have taken the matter in hand after Iranian students attacked police and civilians during a visit to Washington by the Shah of Iran a year ago last November.

BELL WARNED the Iranians: "We're not going to put up with this kind of conduct by visitors to this country." Since then, he has widened the probe to include deportation of any foreign student who was in violation of INS law.

The INS has balked at such a review in the past on grounds it lacked manpower. Bell reacted with heat to the INS claim. He told a newsman, "If the attorney general directs them to do it, they'll do it. Everything about INS is a shortage of manpower. They have 10,000 people. They must be able to do something."

Bell's comments, though sharper, mirror and extend those made by other Justice Department officials during a recent Tribune investigation of the INS.

Previous investigations of the INS were described as having been kept "within the confines of the agency."

U. S. agencies fail to keep tabs on foreign students

While 8000 AMERICANS ARE INVOLUNTARILY EXPATRIATED FOREIGN STUDENTS ARE UNSUPERVISED. (ACCORDING TO JURISDICTIONAL STATEMENT)

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1978

CYRUS VANCE, SECRETARY OF STATE, APPELLANT

v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS
FOR THE SEVENTH CIRCUIT

MOTION TO DISMISS APPEAL

AND

MOTION TO STRIKE JURISDICTIONAL STATEMENT

DITKOWSKY & CONTORER
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MOTION TO DISMISS APPEAL
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The Appellant herein seeks to review the Decision of the United States Court of Appeals for the Seventh Circuit which was entered on May 26, 1978, and appears in Appendix B of Appellant's Jurisdictional Statement. The question presented revolves around the determination by the Court of Appeals that 8 USC 1481 (c) is unconstitutional as it contravenes the Citizenship Clause of the Fourteenth Amendment.

1. Correction of Statement of Facts

The Statement of Facts presented by the Appellant is not wholly accurate ignoring uncontroverted facts and admissions by Appellant. The Trial in the U.S. District Court revealed not one Application for Certificate of Mexican Nationality, but two. See Trial Exhibits 32 and 36. The second Application for Certificate of Mexican Nationality was not signed by the Appellee at all but his name was forged thereon. Appellee's name was misspelled! Mr. Parsons was asked to identify the signature and could not identify the signature or the person who signed it.

The Appellant's attorney in examining Mr. Terrazas, the Appellee herein, elicited from him the circumstances surrounding the execution of the Application referred to on Page 3 of the Brief. The Appellee stated uncontrovertedly that he signed the document in blank, without reading it.

(TR 19 Mrs. Laverne Terrazas, (TR 490) testified under oath, also uncontroverted, that the document was in fact signed in blank. A neighbor, Mrs. Fugman, testified as to her conversations (TR. 477, 479, 484) with the Appellee at approximately the time that the so-called Application was signed in blank. The foregoing is set forth to show that the evidence reveals that not only was the Appellee surprised buthe was a passive participant in the obtaining of the Certificate of Mexican Nationality. Attention is called to the Transcript Page 236 and the following testimony relative to Exhibit 32 by Mr. Wesley Parsons:[1]

"Q. I want to ask you if you ever saw Exhibit 32?
A. No I did not.
Q. What is Exhibit 32?
A. This appears to be an application for someone who wishes to apply for a Certificate of Mexican Nationality.
Q. Do you see anybody's signature on there that you recognize?
A. I don't know whose signature is on this document, I have no way of knowing."

On page 4 of its Brief, Appellant states that Appellee wanted a determination of his citizenship. Appellant proved that Appellee wanted more than a determination. Exhibit 14a, a document edited extensively by consular officials who now contend that standard forms were filled out, indicates that Mr. Terrazas had been told by a Consular Official that he had committed an overt act of treason against the United States. On page 269 Mr. Parsons was

1 So confused was the Appellant's presentation that the District Court found that its evidence established expatriation as occurring on August 3, 1971. The Certificate of Loss of Nationality recites April 3, 1971.

again asked:

"Q. Did you inform the Department of State that Mr. Terrazas was surprised when you told him that he had allegedly expatriated himself?

A. To the best of my knowledge I did not.

Q. Did you inform the Secretary of State that Mr. Terrazas believed he had committed an overt act of treason?

A. No, I did not inform the Department of State of that fact.

Q. Did you inform the Department of State that Mr. Terrazas believed that because he had obtained Certificate of Mexican Nationality that he could no longer go home to his family?

A. No, I had no reasons.

Q. Did you call Mr. Terrazas' school to find out if they required a Certificate of Mexican Nationality for a diploma?

A. No, I did not."

It is to be noted that the document prepared (Exhibit 14a) does not give any idea to a non-lawyer of the consequences of preparing it. In point of fact, it states that it is an Application of Registration. On the final page of the document on December 9, 1971, Wesley Parsons, who is represented by Defendant as not making a determination of Plaintiff's citizenship, made a recommendation and determination, stating:

> "It is the opinion of the Consular Officer that subject expatriated himself under Section 34982 of the Immigration and Nationality Act by voluntarily taking an oath of allegiance to a foreign state and specifically renouncing any claim to his American Citizenship in connection with the Certificate of Mexican Nationality. The subject came to the Consul to Clarify his citizenship status and wishes to receive a defitive statement regarding his loss of nationality. It is therefore recommended that his application for registration be disapproved."

The Appellant, in its Brief, states that on November 15, 1971 the Consul said it presented the Appellee certain "standard forms." Such a statement is not in accordance with the facts. Not only were the documents not "standard forms" but it appears that a Mexican National struck out words therein, red-penciled others and changed the meaning of full statements. See transcript Pages 402 - 407.

It is also interesting to note that Mexico has abolished the oath so it was therefore impossible for Appellee to take any oath of allegiance to Mexico.

The Court of Appeals reversed the Trial Court's decision but in addition to reversing the decision the Court of Appeals was faced with the Government's arguments in the case of United States v. Matheson, 400 F. Supp. 1241, 1245 (S.D.N.Y. 1975), aff'd, 532 F 2d. 809 (2d Cir.) cert denied, 45 L.W. 3250 (1976) P. 23a of Brief, wherein in a case on "all-fours" the Government took an entirely different and inconsistent position than it is pursuing in this case.

II. REASON FOR DENYING APPEAL

The Government makes a number of statements which are very troubling. On Page 8 the Appellant states:

> "The court's holding that the Constitution requires that repudiation of citizenship be proved by clear, unequivocal, and convincing evidence is not required by prior decisions of this Court and nullifies the intent that Congress unequivocally expressed in Section 1481(c)."

The Appellant then cites Nishikawa v. Dulles, 356 U.S. 129 (1958) which clearly did hold that the expatriating act must be proven by clear, unequivocal and convincing evidence.

Appellant then states on Page 9:

> "Three years after Nishikawa, however, Congress amended the Immigration and Nationality Act, 8 U.S.C. 1101 et seq. (1961), to add what is now 8 U.S.C. 1481 (c)."

On Page 12 Appellant states:

> "Eight years after Nishikawa, in Woodby v. Immigration and Naturalization Service, 385 U.S. 276 (1966), this Court held that in a proceeding to deport an alien (emphasis added) the government must establish the facts supporting deportability by 'clear, unequivocal, and convinving evidence'....And the Court observed that the burden of proof was 'the kind of question which has traditionally been left to the judiciary to resolve...."

The statement of the Appellant then goes on to state:

> "....In Afroyim v. Rusk, 387 U.S. 253 (1967), this Court held that Section 401(e) of the Nationality Act of 1940, which provided that a United States citizen lost his citizenship if he voted in a foreign political election, was an unconstitutional exercise of congressional power. The Court held that nothing in the Constitution gave Congress 'any general power, express or implied, to take away an American citizen's citizenship without his assent'."

Appellant in its statement notes Woodby v. Immigration and Naturalization Service case deals with an alien, Afroyim deals with a naturalized citizen, Terrazas deals with a person born virtually within sight of the Capitol of our democracy, being born within the continental limits of the United States in Tacoma Park, Maryland. The argument of Appellant then is to the proposition that a natural citizen, to-wit: one who obtains his citizenship by birthright, is entitled to less than the rights of one who is naturalized or an alien. As additional support as the gravamen for placing the Appellee herein in jeopardy, the Government argues:

> "The decision below will make expatriation extremely

difficult to prove in any contested case."[2] (Page 17 Brief)

The statistics cited are incredible, the Appellant stating:

> "the Department of State has made a finding of loss of nationality in 20,050 cases.... The Department of State estimates that approximately 40 percent of determinations of loss of nationality, from all sources, are contested."

Cases are not tried in a vacuum. Today, a serious problem exists with foreign students who came into this country to study and are rioting in our streets and endangering our population. The Chicago Tribune, Sunday Edition of January 29, 1979 contains an article which is reproduced in full as an attachment hereto and made part hereof. The article reads:

> "In the wake of Atty. Gen. Griffin Bell's vow to deport Iranian students convicted of violence, the Justice Department has discovered record keeping so sloppy that the federal government doesn't know how many foreign students are in this country....
>
> INS records were more than six months out of date, the agency could not say how many students were in the country....
>
> 'We're operating out of 40 million manila folders all over the country,' Jarvis said. 'When someone applies for naturalization, we have to send for his paper file. We lose (track of) about 10,000 people a year who come into the country on tourist or student visas.'....
>
> Following the anti-Shah riot in Beverly Hills, in which 7 were arrested and 35 injured, Bell pledged to deport all Iranians guilty of violence in this country as fast as the law allows....
>
> The INS has balked at such a review in the past on grounds it lacked manpower. Bell reacted with heat to the INS claim. He told a newsman, 'If the attorney general directs them to do it, they'll do it. Everything about INS is a shortage of manpower. They have 10,000 people. They must be able to do something'....
>
> Previous investigations of the INS were described as having been kept 'within the confines of the agency.'"

Thus it appears that Immigration and Naturalization Service is very efficient in eliminating, by finding loss of citizenship, 40 per cent of the 20,000 plus citizens, but in dealing with non-citizens who pose a clear and present danger to the country and its citizenry, Immigration and Naturalization is apparently impotent. The significance of the documentation in the instant case is noted in the Deposition of Wyatt Bernard Johnson. Mr. Johnson was produced and said that when at a social party he indicated that he heard Mr. Terrazas say something terrible about the United States. The terrible statement turned out to be that Mr. Terrazas had said that there was racial discrimination in the United States. Further, Mr. Johnson met with Mr. Parsons at the Consular service and was shown all the documentation which had been prepared - the documentation which the Appellant informs this Court was "standard form". Mr. Parson's comment when he was asked why he needed all the documentation was, (Dep. W. Johnson P. 21)

"Well, he said this was a lesson in CYA.

Mr. Ditkowsky: CYA?

Mr. Dent: Cover your ass, I think, it's a legal term."

Subjecting the Plaintiff-Appellee herein to more legal expense, including the expense of an Appeal to the Supreme

---

2) As a leader in the fight for human rights the quoted statement is pernicious and a violation of Article 15 of the United Nations Universal Declaration of Human Rights. The function of the INS is not to denaturalize citizens!! It is a sorry commentary for Appellant to admit that it denaturalized 8,000 Americans who did not want to be.

Court, is a form of cruel and unusual punishment. The record is clear herein that the Appellee was a young man who went to the Consulate believing the words "consular" to mean "counsellor". In so doing, he put his faith and trust in another young man who was a "consular." This young man did not inform him to see a lawyer but told him that he had committed an overt and treasonable act in signing the Application for Certificate of Mexican Nationality, an application which was signed in blank and not read by the Appellee. The Appellee asked for help. Instead, a foreign national, employed in Mr. Parson's office as office help, determined that the mere possession of a Certificate of Mexican Nationality was an expatriating act. In spite of the fact that the Dept. of State had enunciated its position in its Foreign Affairs Manual and in the Matheson Case (cited supra) that mere possession of a Certificate of Mexican Nationality was not an expatriating act, Appellee was induced to sign a number of documents to his extreme detriment. These documents resulted in the improper issuance of a Declaration of Loss of Nationality. These documents were altered by Consular Officials to give a false impression. The record is replete with examples of the impropriety of the Consular Officials and an apparent lack of understanding of their job. The number of documents prepared indicates the unsureness of the Government in its position and also indicates an extreme over-kill of Appellee.

It is unfair to put the Appellee through more legal battles. His fight in the Courts has demonstrated his sincerity in wanting to protect his citizenship, as well as his faith in the democratic process. To the Appellant, this case represents an intellectual challenge, to the Appellee this matter represents a continuing hardship and a continuing struggle and expense.

WHEREFORE,Appellee prays that the Court examine the record before it, examine the Brief filed in the Seventh Circuit Court of Appeals, and find that Laurence J. Terrazas is indeed a citizen of the United States of America and refuse further the appeal of the Decision of the Seventh Circuit Court of Appeals.

Respectfully Submitted

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BY MR. DENT:

Q All right. In any event, you were in Mr. Parsons' office?

A Yes.

Q And was anyone else there?

A No. Wes and I were there. He showed me this document that this lawyer had written and the lawyer -- and as I recall, then going back five years, it says, "Come now, Mr. Parsons, we must all -- we all make mistakes. We must amend our ways, and admit to our errors."

He was trying to put the blame on Wes as far as why this man rendered. In other words, Wes made him do this and Wes put out another paper where he had signed, this is -- he said to me this is a lesson --

Are you allowed to use profanity or just --

MR. DITKOWSKY: Use it. Use the word he said.

MR. DENT: Is it necessary for him?

You use it, yes, if --

BY THE WITNESS:

A Well, he said this is a lesson in C Y A.

MR. DITKOWSKY: C Y A?

MR. DENT: Cover your ass, I think. It's a legal term.

BY THE WITNESS:

A Yeah, he said, and this is why -- he said to me

signed, and tell me whether any information on that document is not accurate and true information.

THE WITNESS: The address given as my residency in Mexico City is a place where I never lived.

THE COURT: Who lived there, if you know?

THE WITNESS: A brother of my father, Jorge Terrazas.

THE COURT: And was that the aunt that you made reference to --

THE WITNESS: No, your Honor.

THE COURT: -- where you said you lived?

THE WITNESS: No, I was living in Monterrey, Mexico, a thousand miles away from here.

THE COURT: All right, what else is inaccurate?

THE WITNESS: At the bottom, it says that I swore to this document on the 16th of November, 1970. That's an untrue statement because I never signed that document on that date.

THE COURT: Now, when you signed this document, in September, you say --

THE WITNESS: Yes, sir.

THE COURT: -- was there any written information on that document furnished by you?

THE WITNESS: No, sir, there was not.

THE COURT: What was on that original when you signed it?

THE WITNESS: The original was a form letter, just as that is, without any indications of my father's name, mother's name, address, or anything.

THE COURT: Any who gave this to you to sign?

THE WITNESS: My father did.

THE COURT: And what did he tell you?

THE WITNESS: He told me that I was signing a document necessary for me to get my diploma in Mexico.

THE COURT: Did you ask him what that document meant?

THE WITNESS: Yes, I did.

THE COURT: What did he tell you?

THE WITNESS: He told me: "Don't worry about it. Don't argue with me. Just sign it."

THE COURT: Now, did that document at that time contain the following language in Spanish?

Give him a copy of that. Have you got it in front of you?

THE WITNESS: No.

MS. MOSELEY: Here it is.

THE COURT: It is directed to the:

"Department of Foreign Affairs
Bureau of Legal Affairs
Nationality Division
T-l-a-t-e-l-o-l-c-o."

How do you pronounce that?

THE WITNESS: Tlatelolco, or something like that.

THE COURT: Tlatelolco?

THE WITNESS: Right.

THE COURT: "Tlatelolco, D.F. Re: Application for Certificate of Mexican Nationality."

Was that on there when you signed that document?

THE WITNESS: Yes, it was.

THE COURT: And you read it?

THE WITNESS: No, I didn't.

THE COURT: You didn't read the document at all in Spanish?

THE WITNESS: I didn't read it at all, sir.

THE COURT: You didn't read it at all?

THE WITNESS: I glanced at it, but that's it.

THE COURT: The first paragraph of that is in Spanish, and the translation I have. You have the document in front of you, and you tell me whether it is a literal translation.

"I hereby respectfully request that I be issued a Certificate of Mexican Citizenship on the basis of the facts confirmed by the attached documents and in accordance with the legal provisions applicable to the case."

Do you remember reading that on that document?

THE WITNESS: No, I don't, your Honor.

THE COURT: Would you say that you did not read it?

THE WITNESS: I would say that I don't remember

EXERPTS OF UNCONTROVERTED TESTIMONY RELATIVE TO EXECUTION OF ONE OF THE TWO APPLICATIONS.

MS. MOSELEY: The same document, Document No. 48.

THE WITNESS: Yes.

MS. MOSELEY: Yes, what?

THE COURT: Does that refresh your recollection?

MS. MOSELEY: Does that refresh your recollection?

THE WITNESS: It says I studied Spanish. I don't remember, your Honor.

MR. MOSELEY:

Q So by 1970, you were fluent in the Spanish language, isn't that correct?

MR. DITKOWSKY: Objection. It calls for a conclusion.

THE COURT: He may answer.

MS. MOSELEY:

Q You are fluent in the Spanish language, isn't that correct?

A I believe I have a fluency in that language, yes.

Q You signed an Application for Certificate of Mexican nationality dated November 16, 1970, is that correct?

A No, that is not correct.

Q You did not sign a document dated November 16, 1970?

A I did not.

MS. MOSELEY: I would like the court reporter to mark this as Defendant's Exhibit No. --

Your Honor, the difficulty is that we have renumbered the documents, and they didn't follow the pretrial order,

THE COURT: And for the "Domicile" it gives the address:

. "Parroquia 731-302, Colonia Del Valle, Mexico, D.F., Zone 12, Mexico."

Was that on there at the time?

THE WITNESS: It was not. However, if it had been, it would have been erroneous, because that was never my address.

THE COURT: But that was not on there?

THE WITNESS: That was not on there.

THE COURT: All right.

"Place and date of birth: Takoma Park, Montgomery County, Maryland, U.S.A., December 13, 1947."

Was that on there?

THE WITNESS: That was not on there.

THE COURT: (Reading):

"Father's name and nationality: Carlos Terrazas Navarro. Mexican."

Was that on there?

THE WITNESS: That was not on there.

THE COURT: (Reading):

"Mother's name and nationality: LaVerne Genevieve Wootton. American."

Was that on there?

THE WITNESS: That was not on there, but, once,

Q At the time that you signed this document, you understood the words, "I therefore hereby expressly renounce United States citizenship" even though it appears in Spanish?

A Carol, those words were not on there.

Q They were not on there on the original?

A Would you please repeat the question?

Q "I therefore hereby expressly renounce United States citizenship."

A Are you referring to Paragraph 2?

Q Paragraph 2, yes.

A The document that I signed did not give any specific nationality. It doesn't say "citizenship." It says "nationality."

Q But you understood the words, "I therefore hereby renounce --"

A Nationality.

Q "--nationality," and the state had to be filled in?

A It would have had to be filled in.

Q And you understood those words, even though they were in Spanish?

A As I so stated, Carol, I don't remember what was on the form. I don't remember if I read it, and I don't even know if I understood it.

Q Well, you were fluent enough in Spanish to have understood it, if you had read it?

Terrazas or Larry Terrazas.

"Question: Was anyone else present in the room?

"Answer: I don't think so. I think it was just Wesley, John and myself."

Does that statement comport with your recollection of the first meeting?

A No, it does not.

Q All right; at the time of your first meeting with Mr. Terrazas, did he mention to you -- well, did he in your discussions with regard to the Mexican Certificate ask or mention to you its effect on his American citizenship?

Admission by Parsons that he misled Terrazas in informing him that CMN is exp. act

A Well, after he told me that he had one, and so forth, I advised him that as far as I knew, obtaining a Certificate of Mexican Nationality was an expatriating act. We discussed it in that context. In fact, I just finished saying: If you have got a Certificate of Mexican Nationality, you've committed an expatriating act and you've lost your citizenship.

Q Did he ever say to you that he did not see that he could have jeopardized his American citizenship?

A That he did not see how he could have jeopardized his American citizenship?

Q Yes.

A I don't recall him ever having said that.

MR. DITKOWSKY: This seems to be impeaching

MR. DITKOWSKY: Okay, I will withdraw the question.

BY MR. DITKOWSKY:

Q Now, Mr. Witness, you testified that when you told Mr. Terrezas that he had expatriated himself, that he was surprised, is that correct?

A He was surprised, yes. Yes, I would say he was surprised.

Q As a matter of fact, he didn't know that he had expatriated himself, isn't that true?

A Yes, that is true. He was not aware that he had expatriated himself.

Q And he didn't know that he had allegedly expatriated himself until you told him that he had, isn't that correct?

A That is true.

Q And did you tell him the consequences of expatriation?

A The consequences of expatriation? We discussed right there in the office how to get back to the United States, what he would have to do to apply for a visa, and so on and so forth. He brought up the matter of the draft.

Q Did you tell him to seek counsel of a lawyer?

A No, I did not.

Q Did you tell him to speak to your superiors?

A To speak to whose superiors, sir?

Q The people who were to supervise you?

A No.

Q Did you tell him to seek the counsel of anybody else beside yourself?

A No.

Q Did you at this point tell him that he was an alien of the United States?

A Sir, there is no such thing as an alien of the United States.

Q Did you tell him he was no longer a United States citizen?

A I told him that to the best of my knowledge and understanding of the law, he had committed an expatriating act. Again, he wanted an authoritative decision. I explained to him the only way to get it was a Certificate of Loss. I couldn't approve a Certificate of Loss, that it had to go to Washington. But in every case that I had seen like this before or it had been my experience to hear about, the Certificate of Mexican Nationality was considered to be an expatriating act. It had always been upheld. n.B Parsons misrep of the law. Not true in Matheson case.

Q Sir, did he tell you that he wanted a Certificate of Loss of Nationality?

A No, sir. He told me what he wanted was a letter that he was no longer a citizen so that he could advise his

Relative to keeping his employer informed as to all facts

Q Did you inform the Department of State that Mr. Terrazas was surprised when you told him that he allegedly expatriated himself?

A To the best of my recollection, I did not.

Q Did you inform the Secretary of State that Mr. Terrazas believed that he had committed an overt act of treason?

MS. MOSELEY: Objection, your Honor. Object to the form of the question.

THE COURT: He may answer.

THE WITNESS: No, I did not inform the Department of State of that fact.

BY MR. DITKOWSKY:

Q Did you inform the Department of State that Mr. Terrazas believed that because he obtained the Certificate of Mexican Nationality he could no longer go home to his family?

A No, I had no reason.

Q Did you call Mr. Terrazas' school to find out if they required a Certificate of Nationality for a diploma?

MS. MOSELEY: Objection, your Honor.

THE COURT: He may answer.

THE WITNESS: No, I did not.

BY MR. DITKOWSKY:

Q Did you inquire of Mr. Terrazas why he applied

A I don't remember.

THE COURT: Do you recall calling Mr. Parsons' attention to anything in this document at all?

THE WITNESS: No, sir.

THE COURT: All right; that covers the whole gamut of it.

MR. DITKOWSKY:

Q Now, is it true that Mexico has abolished the oath for obtaining Certificates of Mexican Nationality?

A Which oath?

Q The oath that one stands before an official and raises his hand to God and swears allegiance?

A Yes.

MS. MOSELEY: Objection.

THE COURT: Overruled.

Apparently, you struck out from one of these documents the oath of allegiance.

THE WITNESS: The oath of allegiance to the United States.

BY MR. DITKOWSKY:

Q That was the United States?

THE WITNESS: Yes.

THE COURT: All right.

BY MR. DITKOWSKY:

Q Now, what is the procedure for obtaining a Certifi-

BY MR. DITKOWSKY:

Q Did you immediately upon learning of the mistake in your interrogatory try to contact the U. S. Attorney to correct your answer?

A Immediately? No, I didn't.

Q Now, did you find that Mr. Terrazas committed any other expatriating act besides allegedly taking an oath of allegiance to the Republic of Mexico?

A No, I didn't.

Q And you didn't make any recommendation that he had committed any other expatriating act, is that correct?

A I would like to see the FS-176S which is my recommendation.

Q Well, of your recollection now after testifying and seeing it this morning, is your recollection that you found no other expatriating act?

A I would like to see the 176. To the best of my knowledge, the Certificate of Mexican Nationality is the only expatriating act that we brought forth in this case.

Q And Mr. Terrazas did not in your presence renounce his American citizenship, is that correct?

A No, he did not.

Q And when you investigated, did you find that Mr. Terrazas had voted in a Mexican election?

MS. MOSELEY: Objection, your Honor.

John Christiansen and I were socializing. He wanted to know -- he was not asking any questions, trying to find anything that I was doing wrong. He only asked me about my status, what was I doing in Mexico? I told him I was going to school. I told him that I was working. Mr.Christiansen asked me if I was working as a resident American or if I --

Q So in other words, your answer is that you went there at the urging of Mr. Christiansen, is that right?

A Yes, sir. He advised me to go to the Consulate.

Q Had anybody prior to this time questioned your American citizenship?

A No, sir, they had not.

Q And had you traveled to the United States without any questions being asked as to whether you were a citizen or not?

A Yes, sir.

Q I show you a document that was originally in the Defendant's Pretrial Memorandum as Exhibit 23 which has not been produced. It will be our Exhibit LT-4, and I ask you, Mr. Witness, if you received the original of this letter?

A Yes, sir, I did.

Q Is that a true and correct copy of the letter?

A Yes, sir, it is.

Q Who is that letter from?

to this document? Were you present in the courtroom when Mr. Parsons testified to this document?

A Yes, I was. I was present when Mr. Parsons made his statement regarding this document, and I was present when Ms. Ibarra made her statement.

Q Now, this document was typed by you, is that correct?

A Yes, sir, it was.

Q And you did not make the corrections on this document, did you?

A No, sir, I did not.

Q Who made the corrections on this document?

A To the best of my recollection, large portions of paragraphs were stricken by Mr. Parsons. I do not remember if Mrs. Ibarra made any changes on here. I know she saw the document. I cannot ascertain at this moment, nor do I want to swear if she did or she did not make any changes.

Q But your recollection is that Mr. Parsons made them?

A My recollection is that Mr. Parsons made deletions of paragraphs. I do not know specifically which ones, nor do I know if he made any changes on the front part of the form where the questions are.

Q Did you object to any deletions?

A No, sir, I did not.

Q Why did you not?

A Because at that time, I was trying to help them get all of the documentation needed so that they could createthe file that they needed to create.

Q Why did you feel it necessary to create a file?

A Because I wanted to make sure that my position was clear, and I was trying to establish my status as an American citizen.

Q Did you have any intention of obtaining a Certificate of Loss of Nationality?

A No, sir, I did not.

Q Now, on the back of Page 3 of this document, you refer to a Consular Official. Will you identify the Consular Official you refer to?

A All of my transactions regarding these documents were handled between Mr. Parsons and Mrs. Ibarra. The Consular Official that I refer to is Mr. Parsons.

Q How did you get to the Consulate to begin with?

A I went to see Mr. Parsons on a Monday. I went to a party on a Saturday evening, a birthday party for one of the employees of the American Consulate in Monterrey.

During that time, I was socializing, talking to different officials of the American Government, different employees of the American Government. During my socializing, I met Mr. John Christiansen.

TRSTIMONY OF APPELLEE RELATIVE TO HOW HE GOT TO THE CONSULATE AND WHAT WAS SAID TO HIM.

to the Republic of Mexico?

A No, sir, I did not.

Q Now, Mr. Terrazas, you signed documents which have been presented in this court which say that you did sign an oath of allegiance to the Republic of Mexico. Can you explain why you signed those documents?

MS. MOSELEY: Objection, your Honor.

THE COURT: He may answer.

THE WITNESS: I was told by the Citizenship Officer of the American Consulate in Monterrey, Mexico, that by obtaining a Certificate of Mexican Nationality, I had sworn allegiance to Mexico.

THE COURT: Who told you that? What was the name of the man?

THE WITNESS: Mr. Wesley Parsons.

BY MR. DITKOWSKY:

Q And what else did he tell you?

A At that time, he asked me did I realize by taking this oath of allegiance to Mexico, that I was committing an overt act of treason against the United States.

Q And what did you tell Mr. Parsons?

A I told Mr. Parsons that I did not know I was committing any act against the United States, and as far as I was concerned I considered myself as a loyal American citizen.

Q Did you pay him a fee?

A I did not pay him a fee. My father paid him.

Q Did you know of his actions?

A I did not have the slightest idea of what he was doing in Mexico City.

Q Did you authorize Attorney Rebollar to appear for you and obtain a Mexican Birth Certificate?

A No, sir, I did not.

Q Did you authorize him to sign your name?

A No, sir, I did not.

Q Do you have Exhibit 32 here?

A No, when you first asked for it, I didn't have it.

Q All right. I show you a copy of Exhibit 32. The copy that has the number on it seems to have disappeared. I ask you to identify what that document is.

A It is an Application for Certificate of Mexican Nationality.

Q Now, I want you to look at the signature on that document, and I want to ask you a question about that signature.

A Yes, sir.

Q Is that your signature?

A No, sir, it is not.

Q Did you authorize anyone to sign your name to that?

A I did not.

U.S. fails to keep tabs on foreign student

U. S. agencies fail to keep tabs on foreign students

By John Maclean
Chicago Tribune Press Service

WASHINGTON—In the wake of Atty. Gen. Griffin Bell's vow to deport Iranian students convicted of violence, the Justice Department has discovered record keeping so sloppy that the federal government doesn't know how many foreign students are in this country.

Partly as a result, thousands of foreign students, many of whom are not Iranians, face possible deportation, according to early results of the department's probe. The Immigration and Naturalization Service [INS], a Justice Department agency, faces a major shakeup.

INS figures show 323,000 foreign students in this country, of which 231,710 are "out of status," an INS term meaning they have overstayed their visas or cannot be located at schools they were to attend. Both conditions are grounds for deportation, as is conviction on a felony charge.

BUT THOSE figures do not include students who went home after the school year ended last spring, or those who arrived for the school year which began last fall. About 116,000 students come here each year from abroad.

Bell, who personally ordered the probe, was said to be "mad as a S.O.B." about INS inefficiency. Other Justice officials said INS records were so poor that they "don't even know what the size of the problem is."

When Bell ordered the check following a violent demonstration by Iranians in Beverly Hills, Cal., Jan. 2, it was found that INS computers had a backlog of 1 million pieces of information waiting to be fed into them.

INS records were more than six months out of date, the agency could not say how many students were in the country, and INS executives claimed they had so few inspectors they could not track down most visa offenders.

AS A RESULT, Bell ordered every INS district director to check by phone in his area with all the schools having foreign students in an effort to get current information.

Bell also ordered a spot check in the Los Angeles area where the Jan. 2 demonstration occurred. The files of 500 students there have been checked at random in a preliminary survey that showed 28.8 per cent out of status. Bell's spokesman, Terry Adamson, cautioned that could mean simply that a student has transferred from one school to another without notifying INS.

"The foreign student problem is clearly a significant contributor to the illegal alien problem," Adamson said.

"We think it is healthy to have a flow of foreign students in and out, but there is a notable problem if too many students overstay their visas."

THE INS has estimated there are about 36,000 Iranian students here. But the State Department has estimated the

Continued on page 16, col. 1

Continued from page one

number ...igh as 50,000-60,000, many of whom are believed no longer attending classes.

A spokesman for the INS, Verne Jervis, said that INS is so understaffed and its record keeping so poor that INS investigators do not work on individual cases. Jervis said that if a foreign student drops out of school, overstays his visa, and gets a job here, "the chances of his being caught are not very great." The 1,000 INS inspectors spend their time instead trying to track down businesses that employ large numbers of illegal aliens.

"We're operating out of 40 million manila folders all over the country," Jarvis said. "When someone applies for naturalization, we have to send for his paper file. We lose [track of] about 10,000 people a year who come into the country on tourist or student visas."

JERVIS SAID efforts to computerize information have been made but have advanced slowly. He acknowledged that human operators are about 6 months behind in feeding information into the computer bank.

After visiting the INS, Bell began considering the formation of a special task force to make recommendations on ways to unscramble the agency's managerial ills.

Following the anti-shah riot in Beverly Hills, in which 7 were arrested and 35 injured, Bell pledged to deport all Iranians guilty of violence in this country as fast as the law allows.

He also said he was partly to blame for past policy, which left the handling of the Iranians strictly to local police. He said he should have taken the matter in hand after Iranian students attacked police and civilians during a visit to Washington by the Shah of Iran a year ago last November.

BELL WARNED the Iranians: "We're not going to put up with this kind of conduct by visitors to this country." Since then, he has widened the probe to include deportation of any foreign student who was in violation of INS law.

The INS has balked at such a review in the past on grounds it lacked manpower. Bell reacted with heat to the INS claim. He told a newsman, "If the attorney general directs them to do it, they'll do it. Everything about INS is a shortage of manpower. They have 10,000 people. They must be able to do something."

Bell's comments, though sharper, mirror and extend those made by other Justice Department officials during a recent Tribune investigation of the INS.

Previous investigations of the INS were described as having been kept "within the confines of the agency."

While 8000 AMERICANS ARE INVOLUNTARILY EXPATRIATED (ACCORDING TO JURISDICTIONAL STATEMENT) FOREIGN STUDENTS ARE UNSUPERVISED.

Supreme Court, U. S.
FILED
JUL 11 1979
MICHAEL RODAK, JR., CLERK

No. 78-1143

In the Supreme Court of the United States

OCTOBER TERM, 1978

CYRUS VANCE, SECRETARY OF STATE, APPELLANT

v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE APPELLANT

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In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1143

CYRUS VANCE, SECRETARY OF STATE, APPELLANT

v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE APPELLANT

OPINIONS BELOW

The opinion of the court of appeals (J.S. App. 1a-16a) is reported at 577 F.2d 7. The opinion of the district court (J.S. App. 19a-30a) is not reported. The opinion of the Board of Appellate Review of the Department of State (J.S. App. 31a-61a) is not reported.

JURISDICTION

The judgment of the court of appeals (J.S. App. 17a-18a) was entered on May 26, 1978. A petition

for rehearing was denied on August 24, 1978 (J.S. App. 62a). The notice of appeal was filed on September 22, 1978 (J.S. App. 63a-64a). On November 10, 1978, Mr. Justice Stevens extended the time for docketing the appeal to and including December 21, 1978. On December 21, 1978, the Chief Justice further extended the time for docketing the appeal to and including January 20, 1979. The jurisdictional statement was filed on January 20, 1979, and probable jurisdiction was noted on March 26, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1252.

CONSTITUTIONAL PROVISIONS AND STATUTE INVOLVED

The Fifth Amendment to the United States Constitution provides in pertinent part:

> * * * [N]or shall any person * * * be deprived of life, liberty, or property, without due process of law * * *.

The Fourteenth Amendment to the United States Constitution provides in pertinent part:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.

8 U.S.C. 1481(c) provides:

> Whenever the loss of United States nationality is put in issue in any action or proceeding * * * under, or by virtue of, the provisions of this chapter or any other Act, the burden shall be upon the person or party claiming that such loss occurred, to establish such claim by a preponderance of the evidence. Except as otherwise provided in subsection (b) of this section, any person who commits or performs, or who has committed or performed, any act of expatriation under the provisions of this chapter or any other Act shall be presumed to have done so voluntarily, but such presumption may be rebutted upon a showing, by a preponderance of the evidence, that the act or acts committed or performed were not done voluntarily.

QUESTIONS PRESENTED

1. Whether proof of specific intent to surrender United States citizenship is required before a citizen can be found to have voluntarily relinquished that citizenship.

2. Whether the provision of 8 U.S.C. 1481(c) that the burden of proving loss of nationality shall be met by a preponderance of the evidence is constitutional.

3. Whether the provision of 8 U.S.C. 1481(c) that an act of expatriation is presumed voluntary unless involuntariness is proved by a preponderance of the evidence is constitutional.

STATEMENT

1. Appellee was born in Maryland on December 13, 1947 (Tr. 10, 35-36). His father was a citizen of Mexico and his mother was a citizen of the United

States. Appellee was thus both a citizen of Mexico under the laws of that country and a citizen of the United States under the Fourteenth Amendment (J.S. App. 2a).

In the fall of 1970, while a student at the Colegio Commercial Ingles in Monterrey, Mexico, appellee, then 22 years old, applied for a Certificate of Mexican Nationality. The application contained the following statement printed in Spanish (A. 5a)[1]:

> I therefore hereby expressly renounce ———— citizenship, as well as any submission, obedience, and loyalty to any foreign government, especially to that of ————, of which I might have been subject, all protection foreign to the laws and authorities of Mexico, all rights which treaties or international law grant to foreigners; and furthermore I swear adherence, obedience, and submission to the laws and authorities of the Mexican Republic.

The blank spaces in the statement were filled in with the words "Estados Unidos" (United States) and "Norteamerica" (North America), respectively.[2] The signed application was submitted to the Mexican government on November 16, 1970.

[1] "A." refers to the Appendix to this brief. On June 11, 1979, the Court granted our motion to dispense with a joint appendix.

[2] It is not clear from the evidence whether the blanks were filled in when appellee signed the application. Compare J.S. App. 32a-33a, 21a, 3a.

On April 13, 1971, appellee was issued a Certificate of Mexican Nationality[3] (A. 8a-9a) which certified that appellee

> has furthermore sworn adherence, obedience, and submission to the laws and authorities of the United Mexican States, and has expressly renounced all rights inherent to any other nationality, as well as all submission, obedience, and loyalty to any foreign government, especially to those which have recognized him as that national.

Appellee admitted that he read and understood this certificate when he received it (J.S. App. 21a).

On August 30, 1971, about four months after receiving his Certificate of Mexican Nationality, appellee went to the United States Consulate in Monterrey and met with Wesley Parsons, a consular officer. According to Parsons, appellee stated that he wanted "a determination of some kind on his citizenship, that he felt he was both a Mexican and an American citizen, but he felt more Mexican than American[,] * * * that he intended to stay in Mexico, and that it was his impression that it was somehow illegal or

[3] The Mexican Government considers the declaration or allegiance to Mexico executed in connection with an application for a Certificate of Mexican Nationality to be effective upon issuance of the Certificate, which constitutes full proof of Mexican nationality (G. Ex. 55; Tr. 132). Based upon this policy, the Department of State regards the declaration of allegiance to Mexico to affect United States nationality when the Certificate of Mexican Nationality is issued, not when the declaration is made. Cf. III G. Hackworth, *Digest of International Law* 218 (1942).

against the laws of the United States for him to maintain both citizenships" (Tr. 172). Parsons explained that dual nationality was not illegal or improper under American law but warned appellee against obtaining a Certificate of Mexican Nationality (Tr. 176-177). When appellee stated that he already had obtained one, Parsons replied that he had probably expatriated himself (Tr. 177). Appellee appeared surprised, but relieved, and requested that Parsons notify his draft board in Illinois that he was no longer an American citizen (Tr. 178, 184).[4] Parsons explained that he could not do so because any loss of citizenship must be authoritatively determined by the Department of State, and he provided appellee with the appropriate forms for obtaining that determination (Tr. 178, 188, 307-308).[5] The next day, appellee returned to the Consulate with a letter he had written to his draft board stating that he was no longer an American citizen. He asked Parsons to sign and mail it, but Parsons refused to do so (Tr. 189-190).

On November 15, 1971, at the Consulate, appellee submitted the completed citizenship forms that Parsons had given him in August, so that a determination

[4] Appellee's hardship deferment had expired four days earlier (J.A. App. 36a). He was reclassified 1-A in November 1971 (*ibid.*).

[5] Appellee did not indicate during this meeting with Parsons that he had obtained the Certificate of Mexican Nationality involuntarily or mistakenly or that he wished to surrender it or to limit its effect (Tr. 183-184).

of his citizenship status could be made (Tr. 193-208). Among other documents, appellee signed an affidavit of an expatriated person (A. 30a), swearing that he had declared allegiance to Mexico freely and voluntarily, that "no influence, compulsion, force, or duress was exerted upon me by any other person" and that his oath of allegiance was "done with the intention of relinquishing my United States citizenship" (*ibid.*).[6] On December 21, 1971, the State Department issued a Certificate of Loss of Nationality (A. 31a-32a).

After he received the certificate, appellee called Parsons and inquired whether he could regain his American citizenship. Parsons advised him that he could appeal the administrative determination of loss of nationality (Tr. 208). Appellee appealed to the Board of Appellate Review of the Department of State, which affirmed the administrative finding of expatriation and denied appellee's application for a United States passport (J.S. App. 31a-61a).

[6] In a letter also submitted on that date, appellee stated that his oath of allegiance to Mexico "was a voluntary personal act on my behalf * * *" (A. 27a). Similarly, in a citizenship questionnaire appellee stated that he had "willingly" sworn allegiance to Mexico and had made no attempt to avoid taking the oath (A. 12a, 15a). On the other hand, appellee answered "no" to the written question, "Did you intend by this oath, or affirmation, to abandon your allegiance to the United States, or transfer your allegiance to the foreign state?" (A. 16a). And, in a separate statement, he said: "By taking this oath I did not consider that I was relinquishing my rights as an American citizen" (A. 13a).

2. Appellee thereafter brought this action under 8 U.S.C. 1503(a)[7] in the United States District Court for the Northern District of Illinois, seeking a declaratory judgment that he is a United States citizen. After a non-jury trial, the district court held that the government had proved by a preponderance of the evidence that appellee had declared his allegiance to Mexico (J.S. App. 20a-21a), which is an expatriating act under 8 U.S.C. 1481(a)(2), and that appellee's evidence was insufficient to rebut the presumption of voluntariness in 8 U.S.C. 1481(c) (J.S. App. 22a).

The district court stated that "[t]he sum of [appellee's] activities compels the conclusion that his oath of allegiance to Mexico was voluntary, and understandingly made as was his abandonment of United States citizenship" (J.S. App. 26a). In making this determination, the district court relied on appellee's signed application for a Certificate of Mexican Nationality, his own prior statements that his oath of allegiance to Mexico was voluntary, and the following evidence (*ibid.*):

---

[7] 8 U.S.C. 1503(a) provides:

> If any person who is within the United States claims a right or privilege as a national of the United States and is denied such right or privilege by any department or independent agency, or official thereof, upon the ground that he is not a national of the United States, such person may institute an action under [the Declaratory Judgment Act] against the head of such department or independent agency for a judgment declaring him to be a national of the United States * * *.

Mr. Parsons testified that when plaintiff first visited the United States Consulate in 1971, he sought a determination of his United States citizenship status so that he could advise the draft board that he was no longer an American citizen (Tr. 178). The evidence also reveals that at the time of plaintiff's Application he was eligible for induction into the United States military, (Tr. 580), having taken a physical examination on September 14, 1970, (Tr. 76; See also, Def. Ex. #13), and raises serious questions regarding plaintiff's "flouting of obligations inherent in American citizenship." *Jalbuena* v. *Dulles*, 254 F.2d 379 (3rd Cir. 1958).

Finally, the evidence adduced at trial indicates that, *inter alia*, plaintiff "loved Mexico and felt more Mexican than American", (Tr. 172, 269, 270, 349; Def. Ex. 14); that he intended to live permanently in Mexico, (Def. Ex. 14, 15; Tr. 172, 349, 351); that he intended to marry a Mexican woman, (Def. Ex. 15, 21; Tr. 349); that he registered for the Mexican military (Tr. 121, 128-129); that he registered with the Mexican Social Security Board (Def. Ex. 44(a), Tr. 128); and that he represented himself as a Mexican citizen and applied for and received a Mexican passport, (Tr. 125, 149, 150, 575; Def. Ex. #1).

3. The court of appeals reversed (J.S. App. 1a-16a). It stated: "Assuming that the proper standards were applied, we are convinced that the record fully supports the [district] court's findings" (*id.* at 8a). But the court found it necessary to evaluate the "constitutional appropriateness" of Section 1481(c)

(*ibid.*). The court reasoned that because Congress cannot impose expatriation on a citizen (*Afroyim* v. *Rusk*, 387 U.S. 253 (1967)), "the issue becomes whether Congress nonetheless retains the power to legislate as to the evidentiary standard for voluntariness or whether instead that term must be defined constitutionally" (J.S. App. 9a). It held that it would be "inconsistent with the spirit of *Afroyim* to conclude that Congress somehow retains the power to define in the way it has here the conditions under which an individual is said to have relinquished voluntarily that citizenship" (*ibid.*) and that to "adopt blindly" Congress' allocation in 8 U.S.C. 1481(c) of the burden of proof in nationality cases "would be to grant indirectly to Congress power over an individual's citizenship that *Afroyim* held that it could not exercise directly" (J.S. App. 10a).

The court of appeals concluded that the government must prove loss of nationality by "clear, convincing and unequivocal" evidence (J.S. App. 11a). It found that standard required by the Fourteenth Amendment as "the minimum burden of proof that can satisfactorily guarantee that the individual's interest in the retention of his citizenship is protected adequately" (*id.* at 14a). The court therefore remanded the case to the district court for further proceedings under that standard (*id.* at 14a-16a).

SUMMARY OF ARGUMENT

Expatriation has traditionally been an "inherent right" of Americans, enabling them to sever their ties to the country of their former nationality or to

this country. Until 1967, expatriation was also considered a sanction that Congress could impose on a citizen in the exercise of its other constitutional powers, so long as no independent constitutional right of the individual was violated. See *Perez* v. *Brownell*, 356 U.S. 44 (1958); *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144 (1963). In 1967, however, the Court held in *Afroyim* v. *Rusk*, 387 U.S. 253, that the Fourteenth Amendment defines a citizenship for the native born and the naturalized that Congress has no power to strip away. Citizenship, the Court stated, could be lost only if "voluntarily relinquishe[d]." *Id.* at 268.

1. The first question in this case is whether, as the court of appeals held, citizenship cannot be lost under any circumstances unless the individual specifically intends to give it up, or whether, as we believe, citizenship may be relinquished regardless of the individual's subjective intent to do so, if he voluntarily commits an act, defined by statute as expatriating, that is so inherently inconsistent with continued allegiance to the United States that a judgment of expatriation is merely a formal recognition of what has, in effect, already happened. The expatriation cases that preceded *Afroyim* explicitly recognized this latter principle, and the dissenting opinion of Chief Justice Warren in *Perez* v. *Brownell*, *supra*, 356 U.S. at 67, discusses it at length. That opinion was the foundation of *Afroyim*, which overruled *Perez*, and an analysis of *Afroyim* ineluctably leads

to the conclusion that the Court did not intend to cast any doubt on the principle's continued validity.

There are substantial reasons why the Court should not now hold that specific intent is required as a condition of expatriation, so long as the individual voluntarily performs a statutorily defined act that unequivocally manifests a transfer or dilution of his allegiance to this country. The government has a compelling interest in knowing with certainty who is a citizen and who is not, so that the demands of citizenship, such as taxes and military service, may be exacted only from citizens and so that the many benefits of citizenship, at home and abroad, may be extended only to those who are entitled to them. Indeed, this interest complements the citizen's own interest in being able to ascertain with assurance what actions he may take without endangering his citizenship and what actions will constitute a relinquishment of that citizenship.

The government's interest is disserved if expatriation requires a judicial showing of specific intent, because such a requirement would effectively enable a citizen to give up his citizenship when that suits his purposes but to reclaim it at some future time by testifying that, despite all appearances, he had never specifically intended to surrender it. The only interests that would be served by such a requirement are the interest of a citizen who wishes to shift his allegiance but at the same time to retain formal American citizenship for some future advantage, and the interest of a citizen who intentionally plots

an ostensible expatriation for some temporary advantage in full knowledge that the government would have no effective way of enforcing it once the individual's need for the advantage has passed. Neither interest is legitimate or deserves protection, and they surely do not outweigh the government's interest in knowing who is a citizen and who is not.

The facts of this case clearly demonstrate the problems created by the court of appeals' approach. Appellee has voluntarily committed an act defined by statute as expatriating (*i.e.*, taking an unequivocal oath of allegiance to another country); this act so inherently demonstrates a transfer of allegiance that he should be held to have expatriated himself. Yet appellee now asserts that he did not intend at the time he took the oath to transfer his loyalty or to relinquish his American citizenship. The court of appeals erred in requiring the government to rebut these assertions and to prove instead that appellee actually intended to surrender his citizenship when he took the oath of allegiance to Mexico.

2. The court of appeals also erred in holding that the statutory burden of proof in 8 U.S.C. 1481(c)—that the party claiming expatriation has the burden of proving it by a preponderance of the evidence—is unconstitutional. Section 1481(c) was enacted to negate this Court's decision in *Nishikawa* v. *Dulles*, 356 U.S. 129 (1958), that the government has the burden of proving expatriation by clear and convincing evidence. The court of appeals misread *Afroyim* as invalidating this statute; *Afroyim* was concerned

with the elements of expatriation rather than the means of proving it. This Court therefore had no need to address the burden of proof question and, in fact, implicitly recognized a congressional power to establish rules of evidence for judicial proceedings where expatriation was at issue.

The burden of proof established by Section 1481(c) should be measured, not by the Citizenship Clause of the Fourteenth Amendment, but by the Due Process Clause of the Fifth Amendment. Thus measured, the statute is constitutional. A citizen's interest in retaining his citizenship is unquestionably of the highest order, but the rigorous standard of proof announced by the court of appeals is unnecessary to accommodate that interest. The inquiry in expatriation cases is not whether the government should take away the individual's citizenship—after *Afroyim*, it is powerless to do so—but only whether the citizen has already done so himself. Thus, the substantive protection inherent in the very concept of expatriation adequately protects the individual's interest in avoiding the erroneous imposition of a significant sanction.

The harshness to the government of the burden of proof required by the court of appeals would be substantially magnified if this Court were to hold, as the court of appeals did, that specific intent is an element of expatriation. It will be exceedingly difficult for the government ever to prove that intent by clear and convincing evidence where the individual testifies to the contrary. By the same token, we acknowledge

that if the Court agrees with us that specific intent is not required, the government's task in expatriation cases would be significantly alleviated regardless of the burden of proof, for the question in such cases would then become simply whether the citizen voluntarily committed an unequivocally expatriating act. This "basically factual" issue is "susceptible of objective proof" (*Addington* v. *Texas*, No. 77-5992 (Apr. 30, 1979), slip op. 13) in a way that subjective intent is not.

3. Finally, the court of appeals erred in striking down the provision of Section 1481(c) that an expatriating act is presumed to have been done voluntarily unless the party resisting expatriation proves the contrary by a preponderance of the evidence. Even assuming *arguendo* that the presumption must be judged by the strict standards this Court has fashioned for presumptions in criminal cases, Section 1481(c) does not violate the Due Process Clause. One may conclude with substantial assurance that it is more likely than not that a person who does an act does it of his own free will. Moreover, it is reasonable to place the burden of proving involuntariness on the individual, because he is in the best position to adduce relevant evidence on the issue. In sum, the evident rationality of the presumption, combined with the individual's opportunity to rebut it by a preponderance of the evidence, satisfies due process.

ARGUMENT

I. INTRODUCTION

A. The Nature of Expatriation

Perhaps because our nation was founded by people who left their native countries to establish a new life, it has long been recognized in this country that "the right of expatriation is a natural and inherent right of all people." Act of July 27, 1868, ch. 249, 15 Stat. 223.[8] But expatriation is not simply a right to be ex-

[8] English common law proclaimed a doctrine of perpetual allegiance, which denied the citizen's right to sever his allegiance to his place of birth. 3 C. Gordon & H. Rosenfield, *Immigration Law and Procedure* § 20.7(b), at 20-43 (rev. ed. 1979). It was long ago established, however, that this rule was inimical to American jurisprudence. In 1859 Attorney General Black stated the American position (9 Op. Att'y Gen. 356, 359):

> Here, in the United States, the thought of giving [the right of expatriation] up cannot be entertained for a moment. Upon that principle this country was populated. We owe to it our existence as a nation. Ever since our independence we have upheld and maintained it by every form of words and acts. We have constantly promised full and complete protection to all persons who should come here and seek it by renouncing their natural allegiance and transferring their fealty to us. We stand pledged to it in the face of the whole world.

Nine years later, in 1868, Congress sounded its agreement, declaring that "the right of expatriation is a natural and inherent right of all people" (Act of July 27, 1868, ch. 249, 15 Stat. 223), and the courts have consistently adhered to that principle. See, *e.g.*, *Afroyim* v. *Rusk*, 387 U.S. 253, 258-268 (1967). While the 1868 Act "was intended to apply especially to immigrants into the United States[,] * * * [t]he language

ercised; it has been held, in some circumstances, to be a punishment so severe that its imposition required the procedural safeguards of the Fifth and Sixth Amendments. *Kennedy* v. *Mendoza-Martinez*, 372 U.S. 144, 167 (1963).[9] Since 1907, Congress has by statute specified the particular acts that result in expatriation, but that statute and its successors reflect the dichotomous nature of expatriation itself: for some citizens, some acts in the statute have indeed been a means of exercising the "inherent right" of expatriation, but for other citizens, statutory acts could lead inadvertently to statelessness. See, *e.g.*, *Trop* v. *Dulles*, 356 U.S. 86 (1958).[10]

is also broad enough to cover, and does cover, the corresponding natural and inherent right of American citizens to expatriate themselves." *Savorgnan* v. *United States*, 338 U.S. 491, 498 n.11 (1950); see also *Perez* v. *Brownell*, 356 U.S. 44, 67 (1958) (Warren, C.J., dissenting).

For a general history of expatriation in the United States, see Duvall, *Expatriation Under United States Law, Perez to Afroyim: The Search for a Philosophy of American Citizenship*, 56 Va. L. Rev. 408 (1970).

[9] Insofar as *Mendoza-Martinez* assumes that expatriation can ever be imposed as a punishment, it has been superseded by *Afroyim* v. *Rusk*, 387 U.S. 253 (1967). See pages 36-38, *infra*.

[10] In the past, the statutory list of expatriating acts has included several that involved no transfer of allegiance to another country. For example, expatriation followed from a dishonorable discharge from military service pursuant to a conviction of wartime desertion. See *Trop* v. *Dulles*, *supra*. Another provision authorized expatriation of a naturalized citizen who lived three years in the country of his former residence or nationality even though such residence may have been insufficient to restore the individual's nationality under

the laws of the foreign country. See *Schneider* v. *Rusk*, 377 U.S. 163 (1964). In such cases, a finding of expatriation would have resulted in statelessness. In each case, the Court found the provision unconstitutional. See note 12, *infra*.

That is not the case today. The acts defined by statute as expatriating (see note 25, *infra*), with one exception, contemplate, as a practical matter, a transfer of allegiance *to* another country. Thus a citizen who is naturalized on his application in another country (8 U.S.C. 1481(a)(1); see also 8 U.S.C. 1481(a)(4)(A)) or who takes an oath of allegiance to another country (8 U.S.C. 1481(a)(2); see also 8 U.S.C. 1481(a)(4)(B)) may be expatriated, but he is not stateless. Similarly, one who voluntarily enlists, without permission of American officials, in the armed forces of another country, will likely be able to take the citizenship of that country. See 8 U.S.C. 1481(a)(3). The only realistic means to acquire statelessness is to make a formal renunciation of American citizenship before an American consular or diplomatic official abroad. 8 U.S.C. 1481(a)(6). The fact that such a renunciation occurred in, say, Canada would not result in Canadian citizenship or even necessarily place the individual in a favored position to receive Canadian citizenship. But the safeguards involved in formal renunciation insure that the individual who does it specifically intends to surrender his American citizenship, and thus his devolution into statelessness is entirely his own choice and is done with full knowledge of the consequences.

The provision allowing expatriation for conviction of treason or conspiracy to overthrow the government by force, or related offenses (see 8 U.S.C. 1481(a)(9)), may conceivably result in statelessness, depending on the circumstances. But given the uniquely hostile nature of treasonous acts, such a result may be tolerable. There is in any event no reason to dwell on that question here.

There appears to be no decision of this Court that has actually resulted in statelessness for any individual. See *Perez* v. *Brownell*, 356 U.S. 44, 80 (1958) (Douglas, J., dissenting). In those cases where a finding of expatriation was upheld, the individual apparently was able to claim the citizenship of another nation. See *Mackenzie* v. *Hare*, 239 U.S. 299, 307

It has been assumed, at least since the early years of this century,[11] that no act can be expatriating unless Congress has designated it as such. It has also been agreed that no act can be expatriating unless it is done voluntarily, that is, knowingly and not under duress. See *Mackenzie* v. *Hare*, 239 U.S. 299, 311-312 (1915); *Savorgnan* v. *United States*, 338 U.S. 491, 502 (1950); *Nishikawa* v. *Dulles*, 356 U.S. 129, 133 (1958). And, until 1967, this Court recognized a congressional power to designate certain acts as expatriating, so long as a "rational nexus" existed between withdrawal of citizenship and a power that Congress otherwise held, such as the power to regulate foreign affairs (see *Perez* v. *Brownell*, 356 U.S. 44, 58 (1958)), and so long as the exercise of that power did not contravene other constitutional restraints, such as the Due Process Clause. See *Kennedy* v. *Mendoza-Martinez*, *supra*, 372 U.S. at 167 (plurality opinion).

(1915) (marriage to a British national); *Savorgnan* v. *United States*, 338 U.S. 491 (1950) (naturalization as an Italian citizen); *Perez* v. *Brownell*, *supra* (citizen born of Mexican parents).

Nothing in our position will, we believe, increase the possibility of statelessness for any person. Certainly appellee will not be stateless, for he is a Mexican citizen regardless of his status under American law (A. 8a).

[11] See Act of Mar. 2, 1907, ch. 2534, 34 Stat. 1228; Nationality Act of 1940, ch. 876, Section 401, 54 Stat. 1168-1169; Immigration and Nationality Act of 1952, 8 U.S.C. 1481.

In 1967, however, this Court decided in *Afroyim* v. *Rusk*, 387 U.S. 253, that the Fourteenth Amendment defined a citizenship that Congress had no power either under that amendment or any other provision of the Constitution to take away.[12] That is,

[12] *Afroyim* was the culmination of a series of cases that began the very day *Perez* was decided, in which the Court held unconstitutional several statutory provisions that deemed certain acts expatriating. In *Trop* v. *Dulles*, *supra*, the Court struck down a provision that expatriated a citizen dishonorably discharged from military service following a conviction for wartime desertion. Four members of the Court concluded that denationalization in such circumstances was a cruel and unusual punishment within the meaning of the Eighth Amendment. See 356 U.S. at 87-104 (plurality opinion). One member of the Court concluded that denationalization was beyond the war powers of Congress. See 356 U.S. at 105-114 (Brennan, J., concurring).

In *Kennedy* v. *Mendoza-Martinez*, *supra*, the Court considered Section 401(j) of the Nationality Act of 1940, as added by the Act of Sept. 27, 1944, ch. 418, 58 Stat. 746, which divested an American of citizenship for leaving the country in time of war to avoid military service. The Court held that the statute violated the Fifth and Sixth Amendments because it imposed the punishment of denationalization without "the procedural safeguards required as incidents of a criminal prosecution" (372 U.S. at 167).

Schneider v. *Rusk*, 377 U.S. 163 (1964) invalidated Section 352 of the Immigration and Nationality Act of 1952, ch. 477, 66 Stat. 163, which provided that a naturalized citizen lost his nationality if he continuously resided for three years in the country of his birth or former nationality. The Court held that this provision was not reasonably related to Congress' power to conduct foreign relations and suggested that the statute's distinction between native-born and naturalized citizens violated the Due Process Clause. 377 U.S. at 168-169. See also *Marks* v. *Esperdy*, 377 U.S. 214 (1964) (expatriation based on service in armed forces of a foreign nation affirmed by an equally divided Court).

a person born or naturalized in this country is a citizen by virtue of the Fourteenth Amendment and thus cannot lose his citizenship unless he "voluntarily relinquishes" it. *Afroyim* v. *Rusk*, *supra*, 387 U.S. at 268.[13] One of the questions necessary to the disposition of this case is whether, in light of *Afroyim*, a citizen must specifically intend to surrender his citizenship or whether "voluntary relinquish[ment]" may result from the voluntary commission of an act inconsistent with a continued allegiance to the United States.

Leaving that question aside for the moment, it is clear that the constitutional validity of the statute at issue here—8 U.S.C. 1481(c)—must be decided in light of *Afroyim*, even though the statute was enacted several years prior to that decision. The court of appeals held that the statute is unconstitutional under *Afroyim*, and we believe the court was wrong. But however that may be, it is important to keep in mind not only that denationalization can be a most undesirable fate—a concern that underpinned *Afroyim*—but also that expatriation has been considered for more than a century (see note 8, *supra*) to be an inherent right of any citizen if he chooses to exercise it—a right that *Afroyim* recognized and preserved.

[13] *Rogers* v. *Bellei*, 401 U.S. 815 (1971), established that *Afroyim* applies only to "Fourteenth-Amendment-first-sentence citizen[s]" (*id.* at 827), that is, those born or naturalized in the United States, and that Congress has power to impose conditions on the citizenship of those who are born abroad of American parents. Because appellee was born in the United States, he is a "Fourteenth-Amendment-first-sentence citizen."

B. Expatriation and Its Proof

As far as the statute itself is concerned, the issue in this case is whether Congress has constitutional authority to prescribe the standard of proof necessary to establish loss of nationality in judicial proceedings and to provide that, in such proceedings, an act of expatriation will be presumed to have been done voluntarily unless the contrary is established by a preponderance of the evidence. The court of appeals held that Congress lacks authority to promulgate those rules of evidence and procedure in expatriation cases.

Section 1481(c) has two parts. The first sentence provides that the party claiming the individual's expatriation (usually, but not always, the government) has the burden of proving by a preponderance of the evidence that "loss of * * * nationality" has occurred. The second sentence provides that an expatriating act, as defined by statute (see 8 U.S.C. 1481(a)), is presumed to have been done voluntarily, but that the party contesting expatriation (usually, but not always, the individual) can rebut the presumption on a showing, by a preponderance of the evidence, that the acts were done involuntarily. Loss of nationality under the statute thus requires proof of (a) the voluntary commission of (b) an act specified by Congress as expatriating.

The court of appeals concluded that "specific intent to renounce U.S. citizenship proved by clear, convincing and unequivocal evidence [is] required before the mere taking of an oath of allegiance could result

in an individual's expatriation" (J.S. App. 12a) and that "the Fourteenth Amendment requires the government to prove by clear, convincing and unequivocal evidence that [the individual] voluntarily relinquished his United States citizenship" (*id.* at 14a). As we read the court's opinion, its holding is twofold: *first*, the government must prove, by clear, convincing and unequivocal evidence, that the allegedly expatriating act was in fact committed; and *second*, the presumption of voluntariness is abrogated and the government must prove by clear, convincing and unequivocal evidence that the expatriating act was done not only voluntarily but with the specific intent to surrender citizenship.

Our position differs from the court of appeals' conclusion in several significant respects. In our view, the government must prove, by a preponderance of the evidence, that the individual in fact committed a specific act designated by statute as expatriating. No such act can result in expatriation unless it was committed voluntarily, but voluntariness, as used in this context, carries its natural and customary meaning, *i.e.*, that the act was done knowingly and not under duress. Voluntariness does not include the specific intent to renounce United States citizenship. In proving voluntariness, the government is entitled to rely on Section 1481(c)'s presumption that a statutorily-designated act of expatriation, if committed, was committed voluntarily. The individual may, as the statute provides, show by a preponderance of the evidence that the act was not in fact the

product of his free will, in which event there can be no judgment of expatriation.

While no act can be expatriating unless it is designated as such by statute, Congress' power of designation is not unlimited. An act can be expatriating under the Constitution only if it is so inherently inconsistent with the continued retention of American citizenship that Congress may accord to it its natural consequences, *i.e.*, loss of nationality. Appellee's declaration of allegiance to a foreign power is such an act, and he committed it voluntarily. Because the government proved those facts as Section 1481(c) allows, the judgment of the court of appeals must be reversed.

We show in Part II that the court of appeals misread *Afroyim* to require, as a condition of expatriation, that the citizen specifically intend to expatriate himself. Analysis of *Afroyim* demonstrates that the Court did not intend to disturb the "traditional legal concept" (Duvall, *supra*, 56 Va. L. Rev. at 409) that there exists a small number of statutorily-defined acts inconsistent with retention of American citizenship and that a citizen who voluntarily and knowingly performs such an act thereby surrenders his citizenship, regardless of whether he may actually have intended to surrender it.[14] In Part III, we show that

[14] In our jurisdictional statement, we did not separately present the question whether expatriation requires a showing of specific intent to surrender citizenship. In our discussion of the constitutionality of Section 1481(c), however, we did indicate (J.S. 14) that appellee's subsequent claim that he had no intent to surrender his citizenship when he applied for a Certificate of Mexican Nationality required a determination whether such intent was necessary to a showing of voluntary relinquishment of American citizenship, and we noted that, if such intent was required, the individual's subsequent denial that he ever had such intent would make it "most difficult" (J.S. 17) ever to prove him wrong, at least under the standard of proof the court of appeals imposed.

the court of appeals was likewise wrong in concluding that *Afroyim*, in effect, held *sub silentio* that Section 1481(c) is unconstitutional under the Fourteenth Amendment. For the reasons we discuss, nothing in *Afroyim* justifies such a conclusion and, in fact, *Afroyim* suggests that Congress has precisely the authority it exercised here.

In Part IV, we demonstrate that the statutory requirement on the party claiming expatriation to prove by a preponderance of the evidence that expatriation has occurred is a constitutional exercise of Congress' power. Finally, in Part V, we show that, in light of the fact that specific intent is not required, Section 1481(c)'s presumption that an expatriating act, once proved, is done voluntarily unless the contrary is shown by a preponderance of the evidence is also a constitutional exercise of congressional power to set rules of evidence for federal courts and does not deny due process of law.

We think it evident that determination of the constitutionality of Section 1481(c) requires this Court to decide whether expatriation requires a specific intent to surrender citizenship. As we have explained above (see pages 22-23, *supra*), the court of appeals plainly held that specific intent is required and that

the government must prove that intent by clear, convincing and unequivocal evidence. We acknowledge that there can be no expatriation without a "voluntary" act. See *Nishikawa* v. *Dulles*, 356 U.S. 129, 133 (1958). The statute presumes that an act done is done "voluntarily." If, as we submit, "voluntariness" in this context means only that the *actus reus* was the product of the individual's free will, then we believe that the presumption is valid because, as we explain in Part V of the text, it is rational to presume that an act done is done voluntarily. On the other hand, if "voluntariness" in this context means an act done with specific intent, then we would not defend the constitutionality of the presumption, for we do not believe it is rational to presume that an act done is done with the design to renounce citizenship. In any event, if specific intent is required, the presumption would be virtually useless, for it would be the rare case in which the government could prove that the act of expatriation was done with specific intent (by whatever standard of proof) yet would be unable to show that it was done voluntarily. Thus, in order to address the question whether the statutory presumption is constitutional, the Court must first, we submit, decide what it is the statute presumes.

If the Court holds, contrary to our argument, that specific intent is required, it need not address at length the constitutionality of the presumption, for, as previously stated, we concede its unconstitutionality. We would still argue, however, that the statutory burden of proof is constitutional and that the government need only prove expatriation—specific intent and all—by a preponderance of the evidence. See Part IV, *infra*.

II. PROOF OF SPECIFIC INTENT TO SURRENDER CITIZENSHIP IS NOT REQUIRED IN EXPATRIATION CASES

As we noted above (see pages 22-23, *supra*), the court of appeals concluded that a specific intent to give up citizenship is an essential element of expatriation. The court reached this conclusion from its reading of *Afroyim* v. *Rusk*, *supra* (see J.S. App. 8a-9a) and, more directly, from its reliance on *United States* v. *Matheson*, 532 F.2d 809, 814 (2d Cir.), cert. denied, 429 U.S. 823 (1976) (see J.S. App. 12a), a case that likewise assumed that *Afroyim* required a showing of specific (or "subjective") intent. We believe that this interpretation of *Afroyim* is erroneous.

To place the matter in its clearest light, it is necessary to examine in some detail this Court's expatriation cases that preceded *Afroyim*. These cases unmistakably recognize that citizenship may be lost, without the specific intent to do so, by the voluntary commission of an expatriating act. Although *Afroyim* narrowed the class of acts that may lead to expatriation, it nonetheless preserved at least the act involved here—the taking of an oath of allegiance to a foreign government—and did not introduce into expatriation proceedings any requirement of proof of specific intent.

A. This Court's Decisions Prior to *Afroyim* Consistently Rejected Any Requirement of Specific Intent

The examination begins with *Mackenzie* v. *Hare*, 239 U.S. 299 (1915), in which a woman who was born in this country and had lived her entire life here was alleged to have lost her citizenship because she married a British national. There was no contention that she at any time actually intended to give up her citizenship, and indeed she claimed that Congress could not impose expatriation on her unless she did intend to transfer her allegiance. *Id.* at 310. The Court rejected this assertion. It held that the United States had an implied power, as an "attribute[] of sovereignty" (*id.* at 311), to divest a citizen of his citizenship and that, while this power "cannot be arbitrarily imposed, that is, imposed without the concurrence of the citizen" (*ibid.*), the law providing expatriation during the course of a marriage to a foreign national was not such a law, for "[i]t deals with a condition voluntarily entered into, with notice of the consequences" (*id.* at 311-312).

Thirty-five years later, in *Savorgnan* v. *United States*, 338 U.S. 491 (1950), the Court was faced with the case of a woman born in the United States who became a naturalized citizen of Italy in order to marry a member of the Italian diplomatic corps. In doing so, she signed a written oath, in Italian, renouncing her American citizenship and pledging her allegiance to the King of Italy. She was later denied a United States passport because, under Section 401 (a) and (b) of the Nationality Act of 1940, ch. 876,

54 Stat. 1168-1169, she was deemed expatriated for having been naturalized in another country and for taking an oath of allegiance to that country.[15] In an action to determine her citizenship, Savorgnan testified that she did not understand the Italian language, and the district court found that, although she intended to obtain Italian citizenship, she had "no intention of endangering her American citizenship or of renouncing her allegiance to the United States." *Savorgnan* v. *United States, supra*, 338 U.S. at 495.

Savorgnan's "principal contention" in this Court was that "she did not intend to give up her American citizenship, although she applied for and accepted Italian citizenship, and that her intent should prevail." 338 U.S. at 499. The Court squarely rejected this contention:

> [T]he acts upon which the statutes expressly condition the consent of our Government to the expatriation of its citizens are stated objectively [citing the Nationality Act of 1940]. There is no suggestion in the statutory language that the effect of the specified overt acts, when voluntarily

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[15] As the Court pointed out in *Savorgnan*, Section 403 of the Nationality Act of 1940, ch. 876, 54 Stat. 1169-1170, deferred expatriation until such time as Savorgnan "[took] up a residence abroad." See 338 U.S. at 493 n.2. Following her naturalization, Savorgnan lived in Italy for four years, and so the Court declined to consider whether the naturalization itself would have expatriated her under the 1907 predecessor of the Nationality Act. See 338 U.S. at 496-497, 504-506.

> done, is conditioned upon the undisclosed intent of the person doing them.

338 U.S. at 499-500.[16]

The Court did not question Savorgnan's assertion that she had never intended to surrender American citizenship and indeed had signed documents written in a language she did not understand. But the Court found that irrelevant: "The petitioner, in the instant case, was a competent adult. She voluntarily and knowingly sought and obtained Italian citizenship. * * * Whatever the legal consequences of those acts may be, she is bound by them." 338 U.S. at 502 (footnote omitted).

With these cases as prologue, we turn to the Court's decision in *Perez* v. *Brownell*, 356 U.S. 44 (1958). Perez was a native-born American who took up residence in Mexico during World War II and voted in a political election there. When he later applied for readmission to the United States, he was excluded on the grounds that he had expatriated himself, and he brought suit for a declaratory judgment that he was a citizen. The Court, in an opinion by Justice Frankfurter, held that Section 401(e) of the Nationality Act of 1940, ch. 876, 54 Stat. 1169, which provided expatriation for voting in a foreign political elec-

[16] Savorgnan did not present the question whether the statute, as thus construed, was constitutional and the Court did not discuss the matter. It did, however, rely on *Mackenzie* v. *Hare*, *supra*, in rejecting Savorgnan's argument that her intent not to surrender American citizenship should be controlling. See 338 U.S. at 501-502.

tion, was constitutional. The Court noted that, in enacting the expatriating provisions of the Nationality Act in issue, Congress "was seeking to effectuate its power to regulate foreign affairs" (356 U.S. at 57), and held that, while "a rational nexus must exist between the content of a specific power in Congress and the action of Congress in carrying that power into execution" (*id.* at 58), such a nexus existed in that case because withdrawal of citizenship was "reasonably calculated to effect the end that is within the power of Congress to achieve, the avoidance of embarrassment in the conduct of our foreign relations attributable to voting by American citizens in foreign political elections" (*id.* at 60).

The Court reaffirmed its prior distinction between voluntariness and intent (356 U.S. at 61):

> Of course, Congress can attach loss of citizenship only as a consequence of conduct engaged in voluntarily. See *Mackenzie* v. *Hare*, 239 U.S. 299, 311-312. But it would be a mockery of this Court's decisions to suggest that a person, in order to lose his citizenship, must intend or desire to do so. * * * What both women [in *Mackenzie* and *Savorgnan*] did do voluntarily was to engage in conduct to which Acts of Congress attached the consequence of denationalization irrespective of—and, in those cases, absolutely contrary to—the intentions and desires of the individuals. Those two cases mean nothing—indeed, they are deceptive—if their essential significance is not the rejection of the notion that the power of Congress to terminate citizenship depends on the citizen's assent. It is a distor-

> tion of those cases to explain them away on a theory that a citizen's assent to denationalization may be inferred * * *.

Chief Justice Warren, joined by Justice Black and Justice Douglas, dissented. Because his dissenting opinion was approved in the Court's later decision in *Afroyim*, which overruled *Perez* (see *Afroyim* v. *Rusk*, *supra*, 387 U.S. at 267), it deserves scrutiny to determine just where the *Perez* majority and the dissenters parted company over the scope of congressional power to recognize expatriation of a citizen.

Chief Justice Warren's central premise was that citizenship of the native-born and the naturalized is secured by the Fourteenth Amendment and that Congress has no power under the Constitution to take that citizenship away. *Perez* v. *Brownell*, *supra*, 356 U.S. at 65-66 (Warren, C.J., dissenting). The Chief Justice stated (*id.* at 65; emphasis in original):

> Whatever may be the scope of its powers to regulate the conduct and affairs of all the persons within its jurisdiction, a government *of* the people cannot take away their citizenship simply because one branch of that government can be said to have a conceivably rational basis for wanting to do so.

Chief Justice Warren went on to recognize, however, that "[t]here is no question that citizenship may be voluntarily relinquished" through the "right of voluntary expatriation" (*id.* at 66). In a distinction crucial to the issues here, he stated that "[i]t has long been recognized that citizenship may not only

be voluntarily renounced through exercise of the right of expatriation *but also by other actions in derogation of undivided allegiance to this country*" (356 U.S. at 68 & n.16, citing *Savorgnan* v. *United States*, *supra*, and *Mackenzie* v. *Hare*, *supra*; emphasis added). Although the Constitution precludes the government from divesting citizenship, the Chief Justice noted that it does

> not impair the principle that conduct of a citizen showing a voluntary transfer of allegiance is an abandonment of citizenship. Nearly all sovereignties recognize that acquisition of foreign nationality shows a renunciation of citizenship. Nor is this the only act by which the citizen may show a voluntary abandonment of his citizenship. *Any action by which he manifests allegiance to a foreign state may be so inconsistent with the retention of citizenship as to result in loss of that status.* In recognizing the consequence of such action, the Government is not taking away United States citizenship * * *. Rather, the Government is simply giving formal recognition to the inevitable consequence of the citizen's own voluntary surrender of his citizenship.

Id. at 68-69 (emphasis added; footnotes omitted).

Chief Justice Warren went on to discuss at some length the Court's decisions in *Mackenzie* and *Savorgnan* and concluded that, while those cases did not "sanction a power to divest citizenship," they did "acknowledge[] that United States citizenship can be abandoned * * * by conduct showing a voluntary trans-

fer of allegiance to another country." 356 U.S. at 73. Thus, in his view, the test to be applied to a statute that deems a particular act expatriating is "whether the conduct it describes invariably involves a dilution of undivided allegiance sufficient to show a voluntary abandonment of citizenship." *Id.* at 75. The Chief Justice was even willing to recognize that in some circumstances voting in a foreign election—the very act that expatriated Perez—would "[d]oubtless * * * have this effect." *Ibid.* But the "fatal defect in the statute before us is that its application is not limited to those situations that may rationally be said to constitute an abandonment of citizenship" (*id.* at 76), because voting in a foreign election "may be a most equivocal act, giving rise to no implication that allegiance has been compromised." *Id.* at 77. In short, said Chief Justice Warren, the right to citizenship is "immune from the exercise of government powers" but, at the same time, "[t]he citizen may elect to renounce his citizenship, and under some circumstances he may be found to have abandoned his status by voluntarily performing acts that compromise his undivided allegiance to his country" (*id.* at 78).

Justice Douglas (who, with Justice Black, joined Chief Justice Warren's dissent) also wrote a dissenting opinion. Joined by Justice Black, he agreed that a citizen remains a citizen unless he "voluntarily relinquishes" that status—the same phrase that the Chief Justice had used. 356 U.S. at 84 (Douglas, J., dissenting); see *id.* at 66 (Warren, C.J., dissenting). Justice Douglas acknowledged that citizenship

"may be waived by the citizen" if the waiver is "*first* a voluntary act and *second* an act consistent with a surrender of the right granted" (356 U.S. at 83; emphasis in original). "While Congress can prescribe conditions for voluntary expatriation," he continued, "Congress cannot turn white to black and make any act an act of expatriation." *Id.* at 84.[17]

This summary clearly indicates that, whatever the sharp division over the question whether Congress could expatriate a citizen merely for voting in a foreign election, the dissenting Justices in *Perez*—indeed, the entire Court—recognized and endorsed at least the principle that a citizen could expatriate himself in one of two ways: explicitly, or by voluntarily engaging in an act that demonstrated such a compromise of allegiance that it "may rationally be said to constitute an abandonment of citizenship." *Id.* at 76 (Warren, C.J., dissenting). Neither the Chief Justice's opinion nor that of Justice Douglas contains any suggestion that a specific intent to renounce citizenship is necessary if the expatriating act falls into the latter category. Indeed, Chief Justice Warren's detailed discussion distinguishing *Perez* from *Mackenzie*—a case in which, as Justice Frankfurter pointed out in the opinion for the Court (356 U.S. at 61-62), the citizen's intent *not* to relinquish

[17] Justice Whittaker also dissented because, like Chief Justice Warren, he could not conclude that voting in a foreign election "can * * * be reasonably said to constitute an abandonment or any division or dilution of allegiance to the United States." *Perez* v. *Brownell, supra,* 356 U.S. at 85 (Whittaker, J., dissenting).

her citizenship was well established but irrelevant—demonstrates that he and his dissenting colleagues felt that no such requirement was necessary. And the Chief Justice left no doubt that a renunciation of American citizenship and naturalization under the laws of a foreign state—an act similar to appellee's oath of allegiance to Mexico—constitutes "conduct showing a voluntary transfer of allegiance to another country" (356 U.S. at 73).

B. *Afroyim* Did Not Introduce a Requirement of Specific Intent

This, then, leads to consideration of *Afroyim* v. *Rusk*, 387 U.S. 253 (1967), the decision that overruled *Perez* and that the court of appeals believed compelled the conclusion that Section 1481(c) is unconstitutional. Afroyim, a naturalized American citizen, lived in Israel for ten years and, while there, voted in a political election. He was denied an American passport to return to the United States because of that vote, on authority of Section 401(e) of the Nationality Act of 1940, ch. 876, 54 Stat. 1169, the same statute that had been upheld in *Perez*.[18] The Court, in an opinion by Justice Black, phrased the issue as "whether Congress can consistently with the Fourteenth Amendment enact a law stripping an American of his citizenship which he has never voluntarily renounced or given up." 387 U.S. at 256.

[18] Section 401(e) provided that an American citizen "shall lose his nationality by * * * [v]oting in a political election in a foreign state * * *." See 387 U.S. at 254 n.1. This section was repealed in 1978. See note 25, *infra*.

The Court began by "reject[ing] the idea expressed in *Perez* that, aside from the Fourteenth Amendment, Congress has any general power, express or implied, to take away an American citizen's citizenship without his assent" (387 U.S. at 257). Although it recognized that the question may have been open prior to passage of the Fourteenth Amendment (*id.* at 261), that amendment, said the Court, removed all doubt whether Congress has "the power to deprive a person against his will of citizenship once obtained" (*id.* at 262). The Fourteenth Amendment "can most reasonably be read as defining a citizenship which a citizen keeps unless he voluntarily relinquishes it." *Ibid.* The purpose of that amendment—to make secure the citizenship granted to Negroes by the Civil Rights Act—"would be frustrated by holding that the Government can rob a citizen of his citizenship without his consent by simply proceeding to act under an implied general power" (*id.* at 263).

The Court noted what appeared to be the belief of Congress, in rejecting a bill in 1868 that would have provided a means of implementing a citizen's decision to expatriate himself, that "the only * * * way * * * citizenship * * * could be lost was by the voluntary renunciation or abandonment by the citizen himself." 387 U.S. at 266. And it found support in previous cases for the proposition that Congress had no power to restrict, abridge or take away citizenship. *Id.* at 266-267. Accordingly, said the Court, "[b]ecause the Fourteenth Amendment prevents Congress from doing any of these things, we agree with [Chief Jus-

tice Warren's] dissent in the *Perez* case that the Government is without power to rob a citizen of his citizenship under § 401(e)." 387 U.S. at 267 (footnote omitted). It concluded that a citizen has "a constitutional right to remain a citizen * * * unless he voluntarily relinquishes that citizenship." *Id.* at 268.

Justice Harlan, joined by Justice Clark, Justice Stewart, and Justice White, dissented. He adhered to the reasoning of *Perez* and vigorously took issue with the majority's reading of the congressional debates surrounding adoption of the Fourteenth Amendment (387 U.S. at 268-293). Justice Harlan also pointed out a "fundamental ambiguity" in the Court's opinion: although Chief Justice Warren's dissent in *Perez*, the reasoning of which the Court ostensibly adopted, spoke clearly of acts in derogation of undivided allegiance that could result in expatriation, the majority opinion in *Afroyim* asserted only that Congress was without power to expatriate a citizen "without his assent." Justice Harlan observed that "voluntariness * * * has been employed to describe both a specific intent to renounce citizenship, and the uncoerced commission of an act conclusively deemed by law to be a relinquishment of citizenship. Until the Court indicates with greater precision what it means by 'assent,' today's opinion will surely cause still greater confusion in this area of the law." 387 U.S. at 269 n.1.

Only if read in isolation, then, can the majority opinion in *Afroyim* lead one to conclude that the Court held that specific intent to surrender citizenship is a

requisite to any judgment of expatriation. While the phrases "without his assent" (387 U.S. at 257) or "against his will" (*id.* at 262) might imply that the Court was assuming a requirement of specific intent, any interpretation of *Afroyim* that emphasizes the word "assent" (or "will") to find such a requirement ignores the larger import of that decision.

Certainly *Afroyim* does not, beyond the occasional use of those words (which Justice Harlan quite accurately characterized as ambiguous), purport to hold that specific intent is necessary to surrender citizenship. It discusses Afroyim's intent not at all. Nor does the Court's opinion suggest any disagreement with Chief Justice Warren's repeated assertion in *Perez* that there is a certain category of acts whose voluntary commission demonstrates an abandonment of citizenship that Congress may properly recognize as expatriating. Indeed, it is far more reasonable to infer that the Court implicitly endorsed that view when it stated that it "agree[d] with [Chief Justice Warren's] dissent in the *Perez* case" (387 U.S. at 267). And we do not think it coincidence that the Court in *Afroyim* expressed its holding by stating that citizenship continues until the citizen "voluntarily relinquishes" it (*id.* at 268)—the very same words that the Chief Justice and Justice Douglas had used in their *Perez* dissents to refer not only to an explicit renunciation of citizenship but also to an abandonment through the knowing and uncoerced commission of an unequivocal act of expatriation. See *Perez* v. *Brownell*, *supra*, 356 U.S. at 66 (Warren, C.J., dissenting), 84 (Doug-

las, J., dissenting). Justice Black, the author of the Court's opinion in *Afroyim*, joined both of these dissents, and Chief Justice Warren and Justice Douglas in turn joined Justice Black's opinion for the Court in *Afroyim*.

Finally, *Afroyim* did not even mention, let alone distinguish or overrule, either *Mackenzie* v. *Hare*, *supra*, or *Savorgnan* v. *United States*, *supra*, both of which had held that even an intent *not* to relinquish citizenship is irrelevant so long as the expatriating act is voluntarily done. If one reads *Afroyim* as requiring a specific intent to relinquish citizenship, surely *Mackenzie* and *Savorgnan* are no longer viable; but if that is the case, the Court's failure to mention them is inexplicable, especially considering the prominence those cases received in Chief Justice Warren's dissent in *Perez*.[19]

In short, we think it clear that, while *Afroyim* established that a citizen can lose his citizenship

[19] The actual expatriating act in *Mackenzie*—marriage to a foreign national—is, like voting in a foreign election, so equivocal that, even if voluntarily performed, it cannot rationally be deemed expatriating. Indeed, Congress reached that conclusion 50 years ago and eliminated marriage from the list of expatriating acts. See *Perez* v. *Brownell*, *supra*, 356 U.S. at 72 n.76 (Warren, C.J., dissenting); *Rocha* v. *INS*, 351 F.2d 523 (1st Cir. 1965), withdrawn on reconsideration, 450 F.2d 946 (1971). But that repeal does not disturb *Mackenzie's* holding that intent is not determinative. In any event, the expatriating act in *Savorgnan*—an oath of allegiance to a foreign nation following naturalization—is in no sense comparable to marriage to a foreigner or voting in a foreign election. Appellee's act here is, of course, much like Savorgnan's and not at all like Mackenzie's.

only if he "voluntarily relinquishes" it, that decision did not go so far as to hold that relinquishment could be "voluntary" only if the citizen specifically intended those consequences.[20] We read *Afroyim*, rather, as recognizing the concept, never disputed by any member of this Court, that there exists a certain category of acts which, if identified by Congress and if done knowingly and of the actor's free will, expatriate the actor regardless of his subjective intent.[21] *Afroyim* held only that voting in a

[20] Indeed, the concept of "voluntariness" in criminal law has never included the notion of specific intent, or any intent at all. Voluntariness means only that the *actus reus* was the product of the actor's free will. See, *e.g.*, *Model Penal Code* § 2.01 (Tent. Draft No. 4, 1955); 1 W. Burdick, *Law of Crime* §§ 198-199 (1946). Defenses such as involuntariness relieve a person of responsibility for his acts as a matter of social policy, not because they negate the mental element required. See *e.g.*, W. LaFave & A. Scott, *Handbook on Criminal Law* § 8, at 46-47 (1972).

[21] This Court has discussed *Afroyim* in detail only once. In *Rogers* v. *Bellei*, 401 U.S. 815 (1971), the Court held that Congress could validly provide that a person born abroad of one American parent was a citizen only if he lived five years in this country between the ages of 14 and 28. The Court explained that this "deprival of citizenship, once bestowed" did not offend *Afroyim* because a person born abroad was not a citizen protected by the Fourteenth Amendment (*id.* at 817) and thus his citizenship was "necessarily left to proper congressional action" (*id.* at 830). The Court's opinion sheds no light on the aspect of *Afroyim* that concerns us here.

In *Ambach* v. *Norwick*, No. 76-808 (Apr. 17, 1979), the Court pointed out that the government has greater latitude in limiting the participation of noncitizens in government than it has in limiting the participation of citizens, and it noted in that regard: "In *Afroyim* v. *Rusk*, 387 U.S. 253

foreign political election, without more, is not among that category of acts.

We recognize that the court of appeals and the Second Circuit, in a case on which the court of appeals relied, have read *Afroyim* as imposing a requirement of specific intent before a finding of expatriation may be made. In the Second Circuit case, *United States* v. *Matheson*, 532 F.2d 809, cert. denied, 429 U.S. 823 (1976), an American-born woman married a Mexican national in 1944 and thus, under Mexican law, became a citizen of that country. She made a declaration of allegiance to Mexico in that year, 25 years before her death.[22] That declaration included an agreement "not to invoke with respect to the Government of the Republic [of Mexico] any right inherent in my nationality of origin." 532 F.2d at 816. Her executor later claimed that such an act had been expatriating and thus that the estate was not subject to American taxation. The

(1967), the Court held that the Constitution forbade Congress from depriving a person of his citizenship against his will for any reason." Slip op. 7 n.5. We do not read this sentence as imposing a requirement of specific intent, any more than *Afroyim's* use of similar language did.

[22] In 1949, five years after the *Matheson* decedent made her declaration, Mexico amended its nationality law to provide that a non-Mexican who married a Mexican citizen would not acquire Mexican nationality unless he specifically renounced foreign allegiance. The declaration of dual nationality that the *Matheson* decedent made was thus discarded and replaced by the unequivocal oath of allegiance (and renunciation of former nationality) that appellee executed. *United States* v. *Matheson*, *supra*, 532 F.2d at 817. See A. 5a.

United States argued, on the other hand, that the declaration was not truly an oath of allegiance to Mexico but was only a formal statement of the nationality she had accepted by her marriage. The court of appeals agreed, noting that the declaration was "merely a subscription to a basic principle of international law governing dual nationality: that a national of one country (e.g., United States) may not look to it for protection while she is in another country (e.g., Mexico), of which she is also a national." 532 F.2d at 816. The decedent's "limited surrender did not preclude her from claiming rights as a United States citizen *outside* of Mexico" (*ibid.*; emphasis in original), and thus unlike the unequivocal oath of allegiance to Italy in *Savorgnan* v. *United States*, *supra*, the declaration was "not expatriating in nature." *Id.* at 818.

The Second Circuit held that, under *Afroyim*, "there must be proof of a specific intent to relinquish United States citizenship before an act of foreign naturalization or oath of loyalty to another sovereign can result in the expatriation of an American citizen." 532 F.2d at 814. The court concluded that, considering among other things the limited acquiescence to Mexican authority in the decedent's 1944 declaration of dual nationality, she "never formed the requisite intent to expatriate * * *." 532 F.2d at 817.[23]

[23] The court of appeals also held that, regardless of whether the decedent had the requisite intent to abandon citizenship in 1944, her estate was estopped from asserting that loss in light

On the other hand, some federal courts have refused to read *Afroyim* as requiring specific intent, or at least have recognized that the matter is a

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of decedent's "numerous representations of loyalty" to the United States subsequent to 1944, which had secured for her a number of advantages, including the issuance of United States passports on 15 different occasions and substantial tax benefits (532 F.2d at 819). The decedent and her estate, said the court, "cannot simply 'blow hot and cold' in their dealings with the government * * *" (*id.* at 820; citation omitted). In addition, the court held that the estate was barred by laches from asserting expatriation, because the decedent had never raised the question during her lifetime and the government was prejudiced by its inability to call her as a witness when the estate finally raised it after her death (*id.* at 820-821).

The estate filed a petition for a writ of certiorari, arguing that *Afroyim* did not overrule *Savorgnan* and that the court of appeals had erred in reading *Afroyim* to require a showing of specific intent to renounce citizenship. No. 75-1651 Pet. 12. The United States opposed, filing a brief that may fairly be read as urging that *Afroyim* did indeed require a showing of specific intent and that the court of appeals had correctly found that the decedent had no such intent. Br. in Opp. 6-8. However, we also urged that "[e]ven if decedent's application for a certificate of Mexican nationality was expatriating," the estate was barred both by estoppel and by laches from asserting that fact to avoid payment of United States taxes. *Id.* at 9, 10 & n.6.

Our position in the present case is not inconsistent with the result we sought in *Matheson* for, as noted, the citizen there did not voluntarily relinquish her citizenship. Our position here, however, is contrary to the statements we made on specific intent in our brief in opposition in *Matheson*. Our present position has been determined after a thorough reexamination of the issues involved in determining whether expatriation has taken place and comes only after discussions with the Department of State, the Immigration and Naturalization Service, the Internal Revenue Service and various divisions of the Department of Justice—an opportunity we did not pursue in preparing our brief in opposition in *Matheson*.

good deal less clear than the court of appeals assumed here. *Peter* v. *Secretary of State*, 347 F. Supp. 1035 (D.D.C. 1972) (three-judge court), for example, clearly recognizes that specific intent is not a requisite of expatriation.[24] Peter was a naturalized American citizen who married a Hungarian national in 1942 (thereby acquiring Hungarian citizenship as well), moved to Hungary in 1949, and was employed by the government of that country until 1965. In 1970, while still a resident of Hungary, she applied at the United States Embassy for registration as an American citizen but was informed that she had expatriated herself under 8 U.S.C. 1481(a)(4) by having accepted employment from a foreign government while a national thereof. The district court held that Peter had not lost her citizenship, finding that the "facts do not support * * * an inference of an intent to forfeit her American citizenship, or voluntarily to renounce it. Nor were these acts shown to be 'so inconsistent with the retention of [American] citizenship as to result in the loss of that status.'" 347 F. Supp. at 1038, quoting from *Perez* v. *Brownell*, *supra*, 356 U.S. at 68 (Warren, C.J., dissenting). The decision therefore supports our view that citizenship may be lost either by an explicit and intentional renunciation or by the voluntary commission of an act necessarily inconsistent

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[24] The court of appeals relied on *Peter* for the proposition that the government bears the burden of proving expatriation by "clear, convincing and unequivocal evidence" (J.S. App. 11a-12a; see 347 F. Supp. at 1038). We discuss that issue at pages 68-76, *infra*.

with continued allegiance to this country. In holding that expatriation had not occurred, the *Peter* court simply found that neither factor was present.

King v. *Rogers*, 463 F.2d 1188 (9th Cir. 1972), "assume[d], without deciding, that specific subjective intent to renounce United States citizenship is required for expatriation" (*id.* at 1189; footnote omitted), but went on to conclude that such intent could be proved by "acts inconsistent with United States citizenship" or by " 'affirmative voluntary act[s] clearly manifesting a decision to accept [foreign] nationality * * *' " (*ibid.*). The court thus appeared to believe that whatever the need for a showing of specific intent, the requirement could be satisfied by acts that implied the existence of that intent. We believe that the concept of inferred or presumed intent is an unnecessary and confusing one in this context, as well as a concept that was vigorously disavowed by the Court in *Perez* (see 356 U.S. at 61-62) and conspicuously ignored by the dissenters in that case. In any event, it adds nothing of substance to the analysis of the issue, for it is, as the Ninth Circuit appeared to acknowledge, simply a label that can be attached to the mental state accompanying the voluntary commission of acts necessarily inconsistent with continued citizenship.

Finally, the Fifth Circuit in *Jolley* v. *INS*, 441 F.2d 1245, cert. denied, 404 U.S. 946 (1971), expressed some doubt as to exactly what acts amounted to "voluntary reliquish[ment]" of citizenship—a question that it too found unnecessary to decide on

the facts of that case—but it mentioned the possibility that there might be some acts "short of formal renunciation [that] can impliedly result in assent to loss of nationality." *Id.* at 1249 n.9. While this is apparently nothing more than the notion of "presumed intent" adopted in *King* v. *Rogers*, *supra*, it does at least recognize, as the Ninth Circuit did, that expatriation can follow from the voluntary commission of certain acts, regardless of the actor's actual subjective intent not to expatriate himself.

C. Specific Intent Should Not Be Required In Expatriation Cases

As we have shown in Parts IIA and IIB, this Court has never held that specific intent to surrender citizenship is a requisite of expatriation. For the reasons we discuss in this section, the Court should not do so in this case. It should explicitly recognize, as Chief Justice Warren did in his dissenting opinion in *Perez* v. *Brownell*, *supra*, 356 U.S. at 68 (footnote omitted), "the principle that conduct of a citizen showing a voluntary transfer of allegiance is an abandonment of citizenship" and thus that "[a]ny action [defined by statute] by which [the citizen] manifests allegiance to a foreign state may be so inconsistent with the retention of citizenship as to result in loss of that status." If the conduct the statute describes manifests "a dilution of undivided allegiance sufficient to show a voluntary abandonment of citizenship" (*id.* at 75), then it "give[s] rise to [an] implication that allegiance has been compromised" (*id.* at 77), and "the Government [may give] formal

recognition to the inevitable consequence of the citizen's own voluntary surrender of his citizenship" (*id.* at 69).

This Court has consistently and in many different contexts emphasized the importance of citizenship and the high value to be placed on it. See, *e.g.*, *Yick Wo* v. *Hopkins*, 118 U.S. 356, 370 (1886); *Schneiderman* v. *United States*, 320 U.S. 118, 120 (1943). We need not dwell on the proposition that a citizen has the highest interest in retaining his citizenship, for the issue here is not whether the government has a countervailing interest sufficient to take citizenship away. *Afroyim* establishes that the government has no power to do so. But it is equally evident, we submit, that the government has a legitimate and substantial interest in being able to identify and announce those acts that, if voluntarily performed, will be taken as manifesting a transfer of allegiance sufficient to allow expatriation to follow, and to recognize and deal with those acts when they occur.[25]

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[25] The acts now designated by statute as expatriating are:

(1) obtaining naturalization in a foreign state as a result of one's own application (or, with certain conditions not necessary to set forth here, as a result of the application of a parent or guardian), 8 U.S.C. 1481(a)(1);

(2) "taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof," 8 U.S.C. 1481(a)(2);

"Citizenship is membership in a political society and implies a duty of allegiance on the part of the member and a duty of protection on the part of the society. These are reciprocal obligations, one being a compensation for the other." *Luria* v. *United States*, 231 U.S. 9, 22 (1913). Hence, "[a]n American citizen owes allegiance to the United States wherever he may reside" (*Kawakita* v. *United States*, 343 U.S. 717, 736 (1952)), and is obliged to contribute his fair share to the orderly governance of the nation by the payment of taxes, military service, jury duty and other just demands. On the other hand, a

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(3) unauthorized military service in the armed forces of a foreign state, 8 U.S.C. 1481(a)(3);

(4) taking an office in or serving in the employ of, a foreign government while a national thereof or for which an oath of allegiance is required, 8 U.S.C. 1481(a)(4);

(5) "making a formal renunciation of nationality before a diplomatic or consular officer of the United States in a foreign state," 8 U.S.C. 1481(a)(6);

(6) under certain conditions, making a formal written renunciation of nationality while in the United States, 8 U.S.C. 1481(a)(7);

(7) conviction of treason, or of attempting by force to overthrow the government, or of specified related offenses (including conspiracy to commit such offenses), 8 U.S.C. 1481(a)(9).

See Act of Oct. 10, 1978, Pub. L. No. 95-432, 92 Stat. 1046, which repealed former 8 U.S.C. 1481(a)(5) (voting in a foreign election) and 1481(a)(8) (desertion).

Here, of course, appellee does not dispute that the taking of an oath of allegiance to a foreign state (8 U.S.C. 1481(a)(2)), is an act that Congress constitutionally may designate as expatriating.

citizen has civil rights secured by the Constitution, including the right to full and effective participation in the political process (see *Sugarman* v. *Dougall*, 413 U.S. 634, 647-649 (1973); *Foley* v. *Connelie*, 435 U.S. 291, 295-297 (1978)), and he may call upon the protection of the United States, both at home and abroad.

The government thus has an undeniable interest in knowing who is a citizen and who is not, who is eligible for the benefits of citizenship and whom it may enlist in time of need. As the Court recently remarked, "[t]he distinction between citizens and aliens, though ordinarily irrelevant to private activity, is fundamental to the definition and government of a State." *Ambach* v. *Norwick*, No. 76-808 (Apr. 17, 1979), slip op. 6. In sum, "'[i]t is a legitimate concern of Congress that those who bear American citizenship and receive its benefits have some nexus to the United States'" and do not entertain divided or diluted national loyalties in derogation of the "unequivocal legal bond" of citizenship. *Rogers* v. *Bellei*, 401 U.S. 815, 832 (1971). The government is therefore entitled to know with certainty whether the commission of certain acts has the effect of expatriation.

This interest is not one that is in conflict with the interest of the individual. A citizen should not be made to guess at what acts will endanger his citizenship. If a citizen wishes to marry a foreign national, or study abroad, or take a job with a foreign government, or naturalize himself under the laws of a

foreign country, or do any number of other acts that to a greater or lesser extent may bring him into official contact with the government of another nation, he no less than the United States has a strong interest in being able to ascertain the consequences of that act on his citizenship. If he desires to retain his American citizenship, he should know with assurance that there are some things that he is free to do, *e.g.*, study abroad, and other things that he is not, *e.g.*, naturalizing himself under the laws of another country. At the same time, if a citizen wishes to expatriate himself, for whatever reasons, he should be able to do so with equal assurance of its validity, so that the United States may not thereafter assert claims on his loyalty (*e.g.*, by attempting to induct him into military service) or otherwise take action to his detriment (*e.g.*, by attaching property in this country in satisfaction of tax obligations premised on his continuing citizenship).

To require that citizenship can be relinquished only on proof of the citizen's specific intent, regardless of the fact that his acts demonstrated a transfer of allegiance at the time they were committed, would impair the government's ability to determine citizenship, and would not advance any legitimate countervailing interest. It would in effect recognize a "fair-weather citizenship" (*Kawakita* v. *United States*, *supra*, 343 U.S. at 736) by allowing a citizen to commit an apparently expatriating act when that is to his advantage and then later to claim that he never intended to sever his ties with the United States

when it became to his advantage to claim some benefit of citizenship. A requirement of specific intent would allow the individual to transfer his allegiance while at the same time retaining the power to reactivate his citizenship upon a mere showing—perhaps even a mere claim [26]—that, in his heart, he did not intend to give up his nationality, no matter what his acts may have appeared to show at the time. This is a bridge that can be crossed in only one direction, for if the United States attempts to exact some duty of citizenship (such as military service or payment of taxes) the individual can effectively burn the bridge by asserting that he intended to do exactly what his acts manifested—an assertion that would be virtually impossible to dispute, given the fact that an expatriating act is, by definition, one that demonstrates a transfer of allegiance to another country.

A specific intent requirement would provide a haven not only for those who actually retained a desire not to surrender their citizenship but also for those who were devious from the beginning, plotting an ostensible expatriation for some temporary advantage in full knowledge that the government had no effective way of enforcing it once the individual's need for the advantage had passed. We believe neither group is deserving of protection. As to the former group, "there would seem to be a point at which the allegiance of an individual has so clearly shifted that his desire, for his own motives, to retain formal American citizenship should become irrelevant * * *, [p]articularly where citizenship has been obtained in a second country as a result of affirmative action by the individual." Note, *The Supreme Court, 1966 Term*, 81 Harv. L. Rev. 110, 138 (1967). As to the latter group, little need be said: if the interests of those who actually wish to retain formal citizenship notwithstanding a transfer of allegiance to another country are irrelevant, *a fortiori* there is no reason to protect those who intentionally create a situation where they can later claim a desire they never had.

[26] See Part IV, *infra*.

The predicament is well illustrated in this case. We simply do not know (and probably will never know) whether, as he claims, appellee had a "desire, for his own motives, to retain formal American citizenship" (Note, *supra*, 81 Harv. L. Rev. at 138) or whether he instead was pursuing a course designed to evade the obligations of military service. Both courts below recognized that appellee's desire to avoid the draft could reasonably be inferred from the evidence. See J.S. App. 5a n.5, 26a. However that may be, what is clear is that when appellee applied for a Certificate of Mexican Nationality he expressly renounced his citizenship of, and his loyalty to, the United States and swore obedience to the authority of Mexico (A. 5a). He also received, read and understood the certificate itself when it was issued to him; that certificate stated that appellee had "sworn adherence, obedience, and submission to the

laws and authorities of the United Mexican States" and "ha[d] renounced all rights inherent to any other nationality, as well as all submission, obedience, and loyalty to any foreign government" (A. 8a; J.S. App. 21a). Nine months after he received this certificate, he submitted a statement in connection with his request for a determination of his nationality status, reiterating that his oath of allegiance to Mexico was freely and voluntarily given and indeed, was given "with the intention of relinquishing my United States citizenship" (A. 30a).

Only after receiving this certificate from the State Department did appellee institute the litigation now before the Court. In this litigation, appellee has claimed that he lacked the requisite specific intent to surrender citizenship (see A. 16a), despite what we believe are his unequivocally contrary acts and statements at the time he swore allegiance to Mexico. Even setting aside for the moment the fact that the court of appeals has required the United States to prove such intent by clear, convincing and unequivocal evidence, we submit that such a subjective state of mind has no place in an expatriation determination, given the opportunities for fraud, the compelling governmental interest in knowing conclusively who is, and who is not, a citizen of the United States, and the protection already afforded to the individual by the requirement that the expatriating act be one designated by statute, voluntarily done, and inherently demonstrative of a transfer of allegiance.

D. Appellee's Oath of Allegiance to Mexico Was an Expatriating Act

Appellee's formal declaration of allegiance to Mexico fits all of the above qualifications as an expatriating act. It is designated by statute. 8 U.S.C. 1481 (a)(2). It was voluntarily done, as appellee freely admits. See A. 12a, 13a, 27a, 30a. And an oath of "adherence, obedience, and submission" to a foreign country unquestionably demonstrates such a transfer of allegiance that expatriation is but a formal recognition of its natural consequences. See *Perez* v. *Brownell*, *supra*, 356 U.S. at 68-69 (Warren, C.J., dissenting).

Moreover, the Department of State and the lower courts were entitled to rely on the fact that the oath of allegiance was executed in connection with appellee's successful application for a certificate of Mexican nationality.[27] The State Department did not proceed under the statutory provision recognizing expatriation for naturalization on application (see 8 U.S.C. 1481(a)(1); J.S. App. 31a), probably because appellee was a Mexican national at birth (see page 4, *supra*). Nor did it proceed under the provision

[27] Appellee later asserted that he did not intend by that application to relinquish citizenship or to abandon his allegiance to the United States (A. 13a, 19a). The court of appeals, focusing on these statements and deemphasizing the squarely contradictory ones contained in the same application (J.S. App. 6a), implied that this was not clear and convincing evidence of appellee's intent to surrender citizenship. This disposition furnishes clear judicial guidance to any citizen on how to fashion what is, in effect, a revocable declaration of expatriation.

recognizing expatriation through renunciation (see 8 U.S.C. 1481(a)(6) and (7), note 25, *supra*), because that section requires the renunciation to be before a United States officer. We therefore do not suggest either the naturalization or the renunciation portions of the statute as alternative grounds to sustain the State Department's issuance of the certificate. See *SEC* v. *Chenery Corp.*, 318 U.S. 80 (1943). But certainly there is nothing to prohibit the State Department from considering the circumstances in which the declaration of allegiance was made, including, as here, the fact that it was offered in connection with a formal demand for recognition of appellee's Mexican nationality and was accompanied by a renunciation of United States citizenship.

It may be that, in other cases, an oath that is more vague or more limited might not be an expatriating act. See, *e.g.*, *United States* v. *Matheson*, *supra*, 532 F.2d at 816; *Baker* v. *Rusk*, 296 F. Supp. 1244 (C.D. Cal. 1969). Such cases must be decided as they arise, but on these facts there can be no doubt that the oath appellee voluntarily took was a transfer of allegiance that Congress was entitled to recognize as expatriating, without concerning itself with appellee's subjective and well-concealed intent.[28]

[28] In the wake of *Afroyim*, the Attorney General published a statement of interpretation (42 Op. Att'y Gen. 397 (1969)) designed to guide the State Department and INS in the administrative determination of expatriation questions. Noting the "sweeping language" of *Afroyim* (*id.* at 397), and cautioning that "the ultimate determination of the effect of

Afroyim is a matter for the courts" (42 Op. Att'y Gen. at 398), the Attorney General stated (*id.* at 400):

> For administrative purposes, and until the courts have clarified the scope of *Afroyim*, I have concluded that it is the duty of executive officials to apply the act on the following basis. "Voluntary relinquishment" of citizenship * * * can * * * be manifested by * * * actions declared expatriative under [8 U.S.C. 1481(a)] if such actions are in derogation of allegiance to this country. Yet even in those cases, *Afroyim* leaves it open to the individual to raise the issue of intent.
>
> Once the issue of intent is raised [18 U.S.C. 1481(c)] makes it clear that the burden of proof is on the party asserting that expatriation has occurred.

Certain acts (such as enlisting in any army hostile to the United States in time of war) would be "highly persuasive evidence * * * of an intent to abandon United States citizenship" (*id.* at 401), but the Attorney General concluded that "[i]n each case the administrative authorities must make a judgment, based on all the evidence, whether the individual comes within the terms of an expatriation provision and has in fact voluntarily relinquished his citizenship" (*ibid.*).

Guided by this statement, both the State Department and the Immigration and Naturalization Service have adopted administrative guidelines that attempt to ascertain the individual's intent by taking into consideration the nature of the expatriating act and the individual's statements and actions made in connection with that act. See 8 Foreign Affairs Manual § 224.20; Interpretations of the INS § 349.1 (d)(2) *et seq.* (We are lodging copies of these materials with the Clerk of the Court.)

As the Attorney General's statement and the operating procedures of the State Department and INS demonstrate, *Afroyim's* teaching on the question of specific intent has been far from clear and (as Justice Harlan predicted in dissent (see page 38, *supra*)), has caused substantial uncertainty at the operating level. Both the State Department and INS have resolved the ambiguity, for the time being, in favor of requiring a showing of specific intent.

III. *AFROYIM* DID NOT HOLD SECTION 1481(c) UNCONSTITUTIONAL

As we showed in Part II, *supra*, there is not, nor should there be, a requirement that a citizen must specifically intend to renounce his American citizenship before that citizenship can validly be lost. It is sufficient that the citizen voluntarily and knowingly perform an act, designated by Congress, which is so unequivocal that Congress may provide formal recognition, *i.e.*, loss of nationality, to the act's natural consequences. We now turn to the question of how such matters may be proved—the question that Section 1481(c) addresses. In this Part, we show that, contrary to the court of appeals' conclusion, the presumption of voluntariness and the burden of proof set forth in Section 1481(c) are not invalid under *Afroyim*, because *Afroyim* did not address those issues. In Parts IV and V, we show that Section 1481(c) must be measured, not against the Fourteenth Amendment Citizenship Clause, but against the Due Process Clause of the Fifth Amendment, and that it is wholly consistent with that Clause.

A. Section 1481(c) Was Enacted to Overrule This Court's Holding That the Voluntariness of an Expatriating Act Must Be Proven by Clear and Convincing Evidence

Like the inquiry into the necessity of proving specific intent, the inquiry into whether Section 1481(c) is constitutional requires some historical perspective. The Court first addressed the issue in detail in *Nishikawa* v. *Dulles*, 356 U.S. 129 (1958). Nishi-

kawa was an American-born citizen who went to Japan in 1939, ostensibly to study, and was drafted into the Japanese army in 1941. After the war, he applied for an American passport in Japan but was informed that he was expatriated under Section 401(c) of the Nationality Act of 1940, ch. 876, 54 Stat. 1169, for having served in the armed forces of a foreign nation. Nishikawa brought suit, although he did not challenge the constitutionality of Section 401(c). He contended only that his induction had been involuntary because he "had heard rumors about the brutality of the Japanese secret police which made him afraid to make any protest" (356 U.S. at 132). Both Nishikawa and the government agreed that "*no* conduct results in expatriation unless the conduct is engaged in voluntarily." 356 U.S. at 133 (emphasis in original).[29] The issue before the Court was whether, as Nishikawa contended, the government was required to prove the voluntariness of the expatriating act, or whether, as the government contended, it could rely on "the ordinary rule that duress is a

[29] The parties in *Nishikawa* also agreed that the government had the burden of proving by "clear, convincing and unequivocal evidence" that an expatriating act had taken place. 356 U.S. at 133. This agreement reflected this Court's decision three years earlier in *Gonzales* v. *Landon*, 350 U.S. 920 (1955), in which the Court announced, in a two-sentence per curiam opinion, that it was "of the view that the standard of proof required in denaturalization cases * * * is applicable to expatriation cases." *Gonzales* left open the question whether that standard overrode the general rule that acts were presumed to have been done voluntarily—the issue presented by *Nishikawa*.

matter of affirmative defense and * * * that the party claiming that he acted involuntarily must overcome a presumption of voluntariness." 356 U.S. at 134.

This Court concluded that "[b]ecause the consequences of denationalization are so drastic [Nishikawa's] contention as to burden of proof of voluntariness should be sustained," 356 U.S. at 134, and, moreover, that the government was required to prove voluntariness by "clear, convincing and unequivocal evidence." *Id.* at 135. It noted that denying the government's use of the presumption of voluntariness was "altogether consonant" with the legislative history of Section 401 (*ibid.*), and that in *Schneiderman* v. *United States*, 320 U.S. 118, 122 (1943), it had already adopted the clear and convincing evidence standard for denaturalization cases. *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 134-135.

Justice Harlan dissented, preferring "the general rule that consciously performed acts are presumed voluntary" (356 U.S. at 144). He explained (*id.* at 145-146):

> One of the prime reasons for imposing the burden of proof on the party claiming involuntariness is that the evidence normally lies in his possession. This reason is strikingly applicable to cases of the kind before us, for evidence that an individual involuntarily served in a foreign army is peculiarly within his grasp, and rarely accessible to the Government. * * * In such circumstances it seems to me the better course to require Nishikawa to prove his allegation of duress rather than to impose on the Government the well-nigh impossible task of producing evidence to refute such a claim.

Three years later, the House Judiciary Committee proposed what is now Section 1481(c) to overturn *Nishikawa* and to adopt the views of Justice Harlan's dissent. H.R. Rep. No. 1086, 87th Cong., 1st Sess. 40-41 (1961). The committee was "willing to accept the rationale of a considerable body of judicial decisions that no conduct results in expatriation unless such conduct is engaged in voluntarily." *Id.* at 40. The committee stated that "[i]t is more difficult, however, to subscribe" to *Nishikawa's* holding that the government bears the burden of proving voluntariness by clear and convincing evidence. *Ibid.* Instead, the committee "was impressed by the * * * statements contained in Justice Harlan's * * * dissenting opinion." *Id.* at 41. Accordingly, it concluded (*ibid.*):

> In order to forestall further erosion of the statute designed to preserve and uphold the dignity and the priceless value of U.S. citizenship * * * the amendment [now Section 1481(c)] sets up rules of evidence under which the burden of proof to establish loss of citizenship by preponderance of the evidence would rest upon the Government. The presumption of voluntariness under the proposed rules of evidence, would be rebuttable—similarly—by preponderance of the evidence, thus leaving undisturbed the body of

judicial decisions in which it is held that expatriation shall not occur if involuntariness, duress, or compulsion is established in rebuttal of the Government's contention that expatriation was voluntary.

Congress was thus able to overrule *Nishikawa* because that decision derived, not from the Constitution, but from this Court's own determination of the appropriate standard of proof where legislative guidance was absent. The Court's opinion in *Nishikawa* nowhere referred to any provision of the Constitution; indeed, it examined the legislative history of the Immigration and Nationality Act and noted that the standard it was announcing was consistent with that history (*Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 135), an observation that would have been quite unnecessary had the Court believed that Congress was without power to determine the burden of proof. And the Court stated that it was applying the "same principle" it had applied to denaturalization cases in *Schneiderman* v. *United States*, *supra*, where it had observed that "[o]ur concern is with what Congress meant by" the predecessor to the 1940 Act. 320 U.S. at 119-120.[30]

Section 1481(c) recognizes, as the committee made clear, that no act can be expatriating unless it is done voluntarily; the statute simply provides that

[30] The House Committee remarked that its proposed amendment applied only to expatriation cases and that the *Schneiderman* standard should be "left undisturbed" for denaturalization cases. H.R. Rep. No. 1086, *supra*, at 40.

voluntariness will be presumed until the party resisting a finding of expatriation proves the contrary by a preponderance of the evidence. As Mr. Justice Harlan observed in *Nishikawa*, this is the common law rule, even in criminal cases. It is also a rule that enhances the truth-finding process, since it is often difficult if not impossible to refute a claim that an act was performed under duress.

It is worth noting at this point that it is not invariably the government that seeks to prove expatriation. In some cases an individual claims that he has been expatriated, and the government claims that he is still a citizen. See, *e.g.*, *Kawakita* v. *United States*, 343 U.S. 717 (1952); *United States* v. *Lucienne D'Hotelle*, 558 F.2d 37, 40 (1st Cir. 1977); *United States* v. *Matheson*, *supra*. Thus the statute does not *a priori* favor governmental interests over private ones. It is facially neutral.[31]

B. *Afroyim* Did Not Consider the Presumption or Burden of Proof Issues Addressed by Section 1481(c)

Article I, Section 8, clause 9 of the Constitution grants Congress power to establish federal courts, and Congress may define the rules of evidence and procedure that govern trials in those courts. See *Tot*

[31] To be sure, the House Committee's report speaks of "the Government" having the burden of proving expatriation and "the Government's" contention that expatriation was voluntary. H.R. Rep. No. 1086, *supra*, at 41. But the language of the statute itself shows that Congress was careful to place the burden on the party claiming expatriation, not the government as such.

v. *United States*, 319 U.S. 463, 467 (1943); *Palermo* v. *United States*, 360 U.S. 343, 347-348 (1959); *Usery* v. *Turner Elkhorn Mining Co.*, 428 U.S. 1, 31 (1976). Congress exercised this power in enacting Section 1481(c). H.R. Rep. No. 1086, *supra*, at 41. *Afroyim* neither stated nor implied that any particular standard or burden of proof was constitutionally required in deciding whether a citizen has voluntarily relinquished his citizenship. The court below nonetheless concluded that to uphold the preponderance test and the presumption of voluntariness of Section 1481 (c) "would be to grant indirectly to Congress power over an individual's citizenship that *Afroyim* held it could not exercise directly" (J.S. App. 10a; footnote omitted).

This reasoning assumes that, because Congress cannot impose expatriation on a citizen, it therefore lacks power to prescribe rules of evidence for determining, in a judicial proceeding, whether expatriation has taken place. The conclusion does not follow from the premise, unless one reads the court of appeals' opinion as holding that no citizen can be expatriated once he resists or protests expatriation in litigation. But it is plain enough that the court was saying no such thing, for it remanded the case to the district court to determine if the government had proven appellee's expatriation by clear and convincing evidence. Such a disposition contemplates that appellee may yet be expatriated, his protest notwithstanding.

The court of appeals' conclusion that *Afroyim* precludes Congress' power to set rules of evidence as it

had done here ignores two aspects of the *Afroyim* opinion, as well as its holding. First, the Court there quoted, at length and with evident approval, the remarks of Representative Van Trump of Ohio who, in 1863, had proposed a bill that, in the Court's words, "went no further than to provide a means of evidencing a citizen's intent to renounce his citizenship" (387 U.S. at 265). In defending his bill, Representative Van Trump stated that, while only the citizen and not the government had power to expatriate, "the evidence of [the citizen's] election to exercise his right * * * is the legitimate subject matter of legislation." *Ibid.*[32]

Moreover, Justice Black, who wrote the Court's opinion in *Afroyim*, had concurred in *Nishikawa* because he believed that no citizen could be involuntarily expatriated (a view that later prevailed in *Afroyim*). In doing so, however, he had observed:

> Of course a citizen has the right to abandon or renounce his citizenship and Congress can enact measures to regulate and affirm such abjuration. But whether citizenship has been voluntarily relinquished is a question to be determined on the facts of each case after a judicial trial in full conformity with the Bill of Rights. *Although Congress may provide rules of evidence*

[32] As the Court noted in *Afroyim*, Representative Van Trump's bill was defeated, apparently because of the then-prevailing belief that Congress had no power to legislate, even to that limited extent, on matters of expatriation. See *Afroyim* v. *Rusk*, *supra*, 387 U.S. at 265 n.20. But there is no indication that the Court in *Afroyim* shared that belief.

> *for such trials*, it cannot declare that * * * equivocal acts * * * establish a conclusive presumption of intention to throw off American nationality.

Nishikawa v. *Dulles*, *supra*, 356 U.S. at 139 (Black, J., concurring; emphasis added).

There is no indication in Justice Black's opinion for the Court in *Afroyim* that he was retreating from his statement in *Nishikawa* that "Congress may provide rules of evidence" for trials to determine whether citizenship has been voluntarily relinquished. Of course, one cannot necessarily ascribe to the Court in *Afroyim* the views expressed in Justice Black's concurring opinion in *Nishikawa*, for *Afroyim* did not present the question whether Congress could provide such rules of evidence. But surely there is no warrant in *Afroyim* for going to the opposite extreme, as the court of appeals here did, finding in *Afroyim* an implicit *rejection* of Congress' power to provide such rules of evidence.

But even aside from the language in *Afroyim*, its holding demonstrates that it does not control the issue here. *Afroyim* established a principle of constitutional law—that the Fourteenth Amendment creates a citizenship for the native-born and the naturalized that Congress cannot take away. At the same time, however, *Afroyim* clearly recognized the well-established view in the United States [33] that the citizen retains an inherent power to surrender his citizenship. 387

[33] See note 8, *supra*.

U.S. at 268. In this area of the law as in many others, it is certainly to be expected that an individual such as appellee may perform an act that appears to have legal consequences and then later claim, in the course of litigation, that the act has no such consequences at all. In this respect, appellee is no different from a person who appears to have entered into a contract and later claims that he did not do so or that the contract is not binding. Rules of evidence must be established and followed to enable a court to go about deciding who is right. To recognize the legal principle that a person is bound by the contracts he enters into says nothing about how the parties go about proving, and how the court goes about deciding, whether the contract was made. So here, to accept the principle of *Afroyim* that a citizen cannot lose his citizenship unless he voluntarily relinquishes it says nothing about how to determine whether the citizenship has in fact been voluntarily relinquished. That is the point that Section 1481(c) addresses.

The remaining question, therefore, is not whether Congress is prohibited by the Fourteenth Amendment from adopting standards for citizenship adjudications, but whether the standards enacted in Section 1481(c) are permissible under those provisions of the Constitution that govern adjudications affecting individual and governmental interests as important as citizenship. It is to that question that we now turn.

IV. THE BURDEN OF PROVING EXPATRIATION BY A PREPONDERANCE OF THE EVIDENCE DOES NOT VIOLATE DUE PROCESS

In our view, the power of Congress to prescribe rules of evidence and burdens of proof (see pages 63-64, *supra*) in expatriation cases is limited not by the Citizenship Clause of the Fourteenth Amendment, but by the Due Process Clause of the Fifth Amendment. Cf. *Tot* v. *United States*, 319 U.S. 463, 467-468 (1943); *Leary* v. *United States*, 395 U.S. 6, 29-36 (1969) (presumptions in criminal cases); *In re Winship*, 397 U.S. 358, 364 (1970) (burden of proof in criminal cases); *Addington* v. *Texas*, No. 77-5992 (Apr. 30, 1979), slip op. 6-8 (burden of proof in civil commitment proceedings). The provisions of Section 1481(c) fully satisfy due process requirements.

The statute in no way limits the right of one who has arguably expatriated himself to a full hearing and a judicial determination of his citizenship. That right is recognized in 8 U.S.C. 1503. Section 1481(c) simply allocates the burden of proof among the parties and sets the standard of proof that the court must follow. See page 22, *supra*. Both the standard of proof and the presumption of voluntariness are appropriate to the adjudication of expatriation and are faithful to evidentiary principles of long standing that cannot be considered arbitrary or unreasonable. In this Part, we consider the statute's requirement that the party claiming loss of nationality must prove the expatriating act by a preponderance of the evidence.

The court below substituted a standard of "clear, convincing and unequivocal evidence" (J.S. App. 14a). We recognize that this Court has, in this area, stated a judicial preference for this standard of proof. See *Nishikawa* v. *Dulles*, *supra* (expatriation); *Schneiderman* v. *United States*, *supra* (denaturalization); see also *Woodby* v. *INS*, 385 U.S. 276, 285 (1966) (deportation). But, as previously discussed (see page 62, *supra*), *Nishikawa* and *Schneiderman* did not purport to establish a constitutional rule requiring such a standard; rather, they created a standard in areas Congress had not addressed. Likewise, *Woodby* did not purport to be constitutionally based. It adopted the "clear, unequivocal, and convincing evidence" only after ascertaining that—unlike the present case—Congress had not addressed the degree of proof for deportation proceedings but rather had "left [it] to the judiciary to resolve." 385 U.S. at 284.[34]

Of course, there are instances in which the Due Process Clause does impose requirements of proof in excess of the preponderance standard. This Court has held that the Constitution requires proof beyond a reasonable doubt for criminal convictions and delinquency adjudications. *Mullaney* v. *Wilbur*, 421 U.S. 684 (1975); *In re Winship*, 397 U.S. 358

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[34] Indeed, in citing *Nishikawa* for the proposition that the court had required clear, unequivocal and convincing evidence in expatriation cases, the Court in *Woodby* added: "But see § 349 of the Immigration and Nationality Act, 75 Stat. 656 (1961), 8 U.S.C. § 1481(c)." 385 U.S. at 285 n.17.

(1970). Moreover, as the Court recently held in *Addington* v. *Texas*, No. 77-5992 (Apr. 30, 1979), the loss of liberty occasioned by involuntary and indefinite civil commitment to a mental hospital is so substantial that the state must present clear and convincing evidence of mental illness and a need for hospitalization.

We have no doubt that a citizen's interest in retaining his citizenship is of the highest order, comparable to that in retaining his liberty against imprisonment or involuntary civil commitment. See *Addington* v. *Texas*, *supra*, slip op. 13-14. If Congress' power to expatriate a citizen were commensurate with its power to revoke the naturalization of one who has procured it by fraud (see *Schneiderman* v. *United States*, *supra*), or its power to deport an alien (see *Woodby* v. *INS*, *supra*), or with the state power to commit a citizen to a mental hospital (see *Addington* v. *Texas*, *supra*), a respectable argument could be made that the magnitude of the citizen's interest, especially when weighed against the strength of the societal interest in inflicting the sanction (see *Addington* v. *Texas*, *supra*, slip op. 6-7), requires that expatriation not be adjudged without clear and convincing evidence of the facts that allow it. This indeed is the concern that prompted this Court's decision in *Nishikawa*, when it assumed that Congress did have such a power (although, as noted above, the Court did not rest its decision on a constitutional plane). But, as *Afroyim* established, Congress cannot expatriate a citizen. Only the citizen

himself can do that, and then only if he has voluntarily committed one of the narrow class of actions that Congress has designated and that show a transfer of allegiance.

The focus of an expatriation case therefore is significantly different than that of criminal, denaturalization or deportation cases, or of civil commitment proceedings. For one thing, the purpose of the expatriation inquiry is not to determine whether the court should impose a sanction on the defendant, such as imprisonment, involuntary confinement, banishment from the United States or other significant loss of liberty. It is merely to determine the individual's legal status, based upon his own voluntary acts—that is, whether he has already expatriated himself. A judgment of expatriation does not place any new or independent burden on the individual or the United States; it recognizes formally what has already occurred. Expatriation proceedings are thus similar to other "status" determinations, such as paternity proceedings, in which the individual may have a significant interest in avoiding a judicial declaration that he occupies a particular status, yet the burden of proof is a preponderance of the evidence. *See e.g.*, *Huntingdon* v. *Crowley*, 64 Cal. 2d 647, 414 P.2d 382, 51 Cal. Reptr. 254 (1966); *State ex rel. Brown* v. *Middleton*, 259 Iowa 1140, 147 N.W. 2d 40 (1966). Moreover, expatriation has no stigma attached to it; unlike a finding of, *e.g.*, criminal activity, mental illness, or fraud in the procurement of citizenship, commission of an expatriating act, such as naturalization in a foreign country, is not inher-

ently socially reprehensible. See *Addington* v. *Texas*, *supra*, slip op. 7. Indeed, as we noted at the outset of our argument (see pages 16-21, *supra*), expatriation is a basic freedom long recognized in this country, and in expatriation proceedings it is sometimes the individual, not the government, who contends that expatriation has occurred.

Thus, the concern that the judicial process not impose a harsh result on a litigant unjustly—the concern that has led to an exacting burden of proof in criminal, deportation and other proceedings—is satisfied in expatriation cases not by the standard of proof, but by the substantial protection inherent in the very concept of expatriation. We do not suggest any denigration of the citizen's interest in keeping his citizenship. To the contrary, that interest is so great that the government cannot take citizenship away under *any* standard of proof. But that very constitutional principle serves to narrow the inquiry in an expatriation case and substantially minimizes the possibility that the citizen's retention of his citizenship will depend on the standard of proof involved.

It is easy to answer this argument by saying that a judgment of expatriation is just as final and just as severe as a judgment of denaturalization or, indeed, as the judgment of expatriation was to Nishikawa when this Court decided his case in 1958. It is, in fact, too easy to answer it that way; such an answer overlooks the fundamental change in the expatriation concept that *Afroyim* established. By striking down Congress' putative power to take away

citizenship for an equivocal act, this Court ensured that no court would ever be called upon to decide whether expatriation was to be inflicted on a citizen and thus eliminated the need for a heavy burden of proof.

We should note in this regard that if the Court disagrees with our previous submission and holds that specific intent is a requirement of expatriation (see Part II, *supra*), then the burden on the government of the court of appeals' "clear, convincing and unequivocal" standard of proof would be substantially magnified. To prove specific intent by clear and convincing evidence is extremely difficult, if not impossible, for it would be a rare litigant who could not produce some story—much like appellee produced in the district court—to explain why actions that appear to have been done to sever allegiance to the United States were in fact motivated by other considerations (*e.g.*, tax relief or avoidance of military service) or were the product of confusion, absentmindedness, haste or a host of other factors. As Justice Frankfurter pointed out in his concurring opinion in *Nishikawa* (356 U.S. at 141; citation omitted):

> Much more difficult [than establishing the commission of an expatriating act] would it be for the Government to establish the citizen's state of mind as it bears on his will, purpose and choice of action—in short, "voluntariness." According to the ordinarily controlling principles of evidence, this would suggest that the indi-

> vidual, who is peculiarly equipped to clarify an ambiguity in the meaning of outward events, should have the burden of proving what his state of mind was. Moreover, any other evidence of his state of mind, outside of his own mental disclosures, will often be found only abroad, where the Government may have no facilities for conducting the necessary investigation. The Court should hesitate long before imposing on the Government, by a generalized, uncritical formula, a burden so heavy that the will of Congress becomes incapable of sensible rational, fair enforcement.

This Court faced much the same problem in *Lavine* v. *Milne*, 424 U.S. 577 (1976), and rejected the constitutional argument that the burden be placed on the state to prove that a welfare applicant left his last job with intent to make himself eligible for benefits. The Court recognized that an "applicant's motive should best be known by the applicant himself." *Id.* at 585. More recently, the Court remarked in *Addington* v. *Texas*, *supra*, that a key consideration in determining whether to apply a rigorous standard of proof is whether the difficulty inherent in meeting such a standard would raise "a serious question as to whether a state could ever prove" the facts necessary to reach a legitimate and socially necessary result.[35] Slip op. 11. We submit

[35] The difficulty is enhanced in expatriation cases because the relevant conduct often occurs, as it did in this case, outside the United States and years before its legal effect is litigated in the courts in this country. Cf. *Fiallo* v. *Levi*, 406 F. Supp. 162, 167 (E.D. N.Y. 1975), aff'd, 430 U.S. 787 (1977).

Under 8 U.S.C. 1503, an action to determine nationality must be brought within five years of an administrative denial of any "right or privilege as a national of the United States * * *," but there is no time limit on the initial assertion of such a right or privilege.

that neither the Fifth Amendment nor the Fourteenth Amendment requires that those who renounce their citizenship or take an oath of allegiance to another country should be allowed to reclaim the benefits of citizenship if the government fails to prove, clearly and convincingly, that their present statements of past intention are incorrect.

By the same token, if the Court agrees with us that specific intent is not required in expatriation cases, then the burden of proving expatriation by clear and convincing evidence would assume more tolerable proportions. As we see the task in that situation, the government would be required to prove the commission of the expatriating act by clear and convincing evidence; that issue is "basically factual and therefore susceptible of objective proof" in a way that specific intent is not. See *Addington* v. *Texas*, *supra*, slip op. 13. We do not concede that the statutory burden of proof would be unconstitutional in such circumstances, for we believe, as stated above, that the protection afforded the citizen by the concept of expatriation itself makes the statutory standard (which is, of course, the burden of proof normally applicable in civil proceedings) an appropriate and constitutional one. We do acknowledge, however, that if specific intent is not an element of expatria-

tion, the clear and convincing evidence standard would pose a significantly diminished threat to the vindication of the government's legitimate interests in determining who is a citizen and who is not.

V. THE STATUTE'S PRESUMPTION OF VOLUNTARINESS IS CONSTITUTIONAL

Once an act is shown to have been done, Section 1481(c) creates a presumption that it was done voluntarily. The presumption is rebuttable, however; the party resisting a finding of expatriation (usually, but not always, the individual) may disprove voluntariness by a preponderance of the evidence. Compare *Morissette* v. *United States*, 342 U.S. 246 (1952); see *Sandstrom* v. *Montana*, No. 78-5384 (June 18, 1979), slip op. 11-12. Like the statute's standard of proof, this presumption was enacted to overcome the contrary rule established in *Nishikawa* v. *Dulles*, *supra*, and to adopt the view of Justice Harlan's dissent in that case: that the burden of proof should lie on the party claiming involuntariness because "the evidence normally lies in his possession." H.R. Rep. No. 1086, *supra*, at 41, quoting *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 145 (Harlan, J., dissenting). See also *Nishikawa* v. *Dulles*, *supra*, 356 U.S. at 141 (Frankfurter, J., concurring); *Lavine* v. *Milne*, *supra*, 424 U.S. at 585.

We note at the outset that the statutory presumption was unnecessary to the determination of voluntariness in this case, for appellee never claimed that his oath of allegiance to Mexico had been given under duress, and appellee's own statements unquestionably

provided adequate reason for the district court to find that he had taken the oath of his own free will. See page 55, *supra*. Nonetheless, Section 1481(c) creates a mandatory rather than a permissive presumption, for "it tells the trier that he or they *must* find the elemental fact [*i.e.*, voluntariness] upon proof of the basic fact [*i.e.*, the commission of the act], at least unless the [individual] has come forward with some evidence to rebut the presumed connection between the two facts." *Ulster County Court* v. *Allen*, No. 77-1554 (June 4, 1979), slip op. 16 (emphasis in original). See also *Sandstrom* v. *Montana*, *supra*, slip op. 4. And we are mindful that, at least in criminal cases, this Court "has held it irrelevant in analyzing a mandatory presumption * * * that there is ample evidence in the record other than the presumption to support a conviction." *Ulster County Court* v. *Allen*, *supra*, slip op. 18. Therefore, assuming *arguendo* that the strict standards this Court has fashioned for evaluation of presumptions in criminal cases apply to this case, we examine the validity of Section 1481(c)'s presumption on its face.[36]

Regardless of whether a presumption is to be treated on its face or as applied to the particular facts of a given case, the question is whether the pre-

---

[36] Even as to mandatory presumptions in the criminal law, the inquiry is whether the presumption is accurate "in the run of cases." *Ulster County Court* v. *Allen*, *supra*, slip op. 18. "This Court has never required that a presumption be accurate in every imaginable case" even where facial analysis is appropriate. *Id.* at 14 n.14.

sumption is rational.[37] A statutory presumption is consistent with the Due Process Clause if there is a "rational connection between the fact proved and the ultimate fact presumed." *Tot* v. *United States*, *supra*, 319 U.S. at 467. The presumption violates due process, on the other hand, if "the inference of the [ultimate or "elemental" fact] from proof of the [evidentiary or "basic" fact] is arbitrary because of lack of connection between the two in common experience." *Id.* at 467-468 (footnote omitted). As the Court reiterated the test in *Leary* v. *United States*, 395 U.S. 6, 36 (1969), "a criminal statutory presumption must be regarded as 'irrational' or 'arbitrary,' and hence unconstitutional, unless it can at least be said with substantial assurance that the presumed fact is more likely than not to flow from the proved fact on which it is made to depend" (footnote omitted). See also *Ulster County Court* v. *Allen*, *supra*, slip op. 21.

We think it may be said with substantial assurance that it is more likely than not that a person who commits an act commits it voluntarily. "[C]ommon sense and experience" (*Barnes* v. *United States*, 412

[37] In the criminal area, of course, special concerns attend, for the prosecution must prove beyond a reasonable doubt every fact necessary to constitute the crime charged. *In re Winship*, 397 U.S. 358, 364 (1970); *Mullaney* v. *Wilbur*, 421 U.S. 684 (1975). The use of presumptions is not forbidden, but, if the presumed fact is an element of the crime, it must be said with substantial assurance to follow from the "basic" fact beyond a reasonable doubt in order to be valid. Cf. *Barnes* v. *United States*, 412 U.S. 837, 845-846 (1973).

U.S. 837, 845 (1973)) tell us that a person usually does what he does of his own free will, rather than unconsciously, accidentally or under duress. This simple fact is sufficient to sustain the presumption.[38]

Section 1481(c) thus does no more than implement what has always been a recognized precept of the common law. Cf. *Barnes* v. *United States*, *supra*, 412 U.S. at 843-845. Its validity is evident, we believe, regardless of this Court's conclusion as to the constitutionality of proving expatriation by clear and convincing evidence. The obvious and unassailable rationality of the presumption, combined with the individual's opportunity to rebut the presumption by a preponderance of the evidence, satisfies the Due Process Clause.

[38] We recognize, of course, that the Court declined to apply the presumption in *Nishikawa* v. *Dulles*, *supra*, not because it had any doubts as to its validity in the great majority of cases, but "[b]ecause the consequences of denationalization are so drastic." 356 U.S. at 134. A different result obtains here, for two reasons. First, Congress has overridden the Court's discretion to formulate rules of evidence by formulating its own. See pages 61-62, *supra*. Second, *Afroyim* removed the animus of the Court's decision in *Nishikawa* by effectively declaring that the government has no power to denationalize a citizen.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1143

CYRUS VANCE, Secretary of State of the United States,

Appellant,

v.

LAURENCE J. TERRAZAS,

Appellee.

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

BRIEF FOR THE APPELLEE

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STATEMENT OF FACTS

The Statement of Facts as presented by the Appellant states Appellant's version of the facts in a parochial and inaccurate manner and neglects to acknowledge clarifications made by the Appellant's own witnesses to their original statements (See Appellee's Motion to Dismiss Appeal, PP 1-4).

The Appellee and his mother testified uncontrovertedly, that the Appellee was attending school in Mexico and the school would not give him his degree unless he could *prove* himself a Mexican citizen. Disturbed over this problem, the

Appellee consulted with his father, a strong-willed Mexican public official, who vowed he would take care of the problem. Further, Appellee uncontrovertedly testified that his father, Governor Terrazas, confronted his family in the family home in Niles, Illinois, and handed his son (Appellee) a paper to sign in blank. The document was not filled in and the events are recalled (ROP 488) by Appellee's mother, as follows:

> "And my husband explained to me that Larry had gotten notification from the school head, the head of the school he was going to, that they found in their Records that they had no record that he was a Mexican citizen, and that he couldn't graduate, couldn't receive his certificate if he couldn't prove that he was a Mexican.
>
> So, well, I got very angry. I said, 'You are the one who put him in that school, you didn't tell me that he had to have a certificate.'
>
> He said, 'Well, I didn't know that.' He said, 'I told the head of the school he was a Mexican because he was my son, and as my son, he had dual citizenship. So when they asked me if he was a Mexican, I says, 'Yes. He's my son. He's a Mexican.'
>
> So I got very angry and I told him he was stupid for registering him in a school where this was going to be a requirement later on. So, of course, one word led to another, and he said that he hadn't been aware at that time that there was anything wrong, and he said 'There's still nothing wrong. He is a dual citizen. Both of my children are. I have always told you this. So we have a paper here that I have obtained, and it is an application to certify his Mexican nationality, and when he gets that returned to the school, he will get his degree.'
>
> So I asked him, I said, 'Well, will that hurt his American citizenship?' He said, 'No, I told you that for years, and years, and years now that my children are dual citizens.' I took his word for it.

> Q. Was that document filled in?
>
> A. It was typed with blank spaces to be filled in."

The Appellant, as part of his production of evidence, produced documents which included a Power of Attorney and an Application for Certificate of Mexican Nationality (Exhibit 32) *neither of which bore the signature of the Appellee, Laurence Terrazas.* Appellant, by his witness Parsons, acknowledges that Exhibit 32 (ROP 236) did not bear Laurence Terrazas' signature and Appellant never produced a scintilla of evidence to prove that Exhibit 32 did not result in expatriation rather than the document on Page 4 of the Appellant's Brief. Both are Applications for Certificate of Mexican Nationality, one does have Appellee's signature on it and one does not. No evidence distinguished which of these was relied upon as the alleged "fatal" act of Appellee.

The date of the alleged taking of an oath by Appellee Laurence Terrazas has never been localized much less proven. In the Appellant's present Brief (BA 5) he uses the date April 13, 1971. The District Court found the date to be August 3, 1971 (JS 19a). The Certificate of Loss of Nationality typed by Appellant's witness Maria Ibarra and signed by Appellant's witness, Wesley Parsons, states April 3, 1971. Ironically, the Appellant's witness Parsons enlightened the Trial Court, in uncontroverted testimony, that Mexico has abolished the oath (ROP 415). Appellee Laurence Terrazas asserts that he never took an oath of allegiance to Mexico, further, it is clear that it was not possible to do so.

Appellee did not "appear" at the office of Parsons as indicated at Page 5 of the Appellant's Brief, but was directed there by an official of the United States Department of State

whom he met at a party (ROP 560). Then, the Appellee went as directed to the Citizen Protection Section of the United States Consulate (an ironic title in this case). Appellee asserts that Parsons told him that he had committed an overt act of treason. Parsons himself admitted that he told Appellee (ROP 177):

> "The one thing that you definitely have got to watch out for and that you should not do, because it is an expatriating act, and if you do it you will expatriate yourself and lose your citizenship, is you should not obtain a Certificate of Mexican Nationality. . . ."

The determination of expatriation was not based on an action of the Appellee, but actually was based on an act of the Mexican Government. The alleged expatriating act was to have Mexico issue a Certificate of Mexican Nationality (ROP 177, 178, 219, 234). (See also statement of Appellee's mother on ROP 488,490 herein.) No intention is shown by Laurence Terrazas to give up his United States Citizenship. His only intent was to do what his father said was necessary for him to graduate from school.

Appellant concedes that the Appellee was "surprised" (BA 6) to discover that, according to Wesley Parsons and Maria Ibarra (his Consular employee and a Mexican national), he was not entitled to his United States Citizenship.[1]

Terrazas was informed by Wesley Parsons that his case had to be documented and Parsons and Consular employee Ibarra promulgated therefor, a labyrinth of incriminating documents, all adverse to Appellee's citizenship interests. Appellee foolishly relied upon their expertise and at their direction and insistence, signed the documents. Exhibit 14A

[1]Parsons admitted that Terrazas was not even aware he had allegedly expatriated himself (ROP 262).

which preceded Exhibit 14, found in the Appellant's Appendix, demonstrates the degree of editing of documents which occurred. Ms. Ibarra testified that she made changes in the documents with at least two pens; some changes were in handwriting and others in printing; some changes were made in pencil and some in ballpoint pen. These changes were all incorporated in Exhibit 14.

Ironically, the documents prepared by Ibarra and Parsons did not indicate that they were for the purpose of obtaining a Certificate of Loss of Nationality, and in point of fact, appear to violate the written instructions of the Foreign Affairs Manual. Appellee never knew that this perfidious purpose was occurring.[2]

Terrazas was not properly informed of the procedures which were to be imposed upon him. He was told that by obtaining a Certificate of Mexican Nationality, he had committed an overt act of treason against the United States. Terrazas was led to this belief by the statements of Parsons, and indeed, in Exhibit 14A, in the portion edited out, Terrazas stated:

> "I do not consider what I have done is an overt act however, that is what I have been told by the American Consulate Officer in Monterey, Mexico. . . . I wish to be allowed to return to the United States of America in the future to visit my mother, my sister, my father's grave, my relatives, and my friends, without having to worry about a federal warrant for my arrest. I do not consider what I have done a criminal offense."

The assertion of the evidence adduced in Appellant's

[2](TR 276-277) Both Parsons and his secretary admitted that they did not know how to obtain a Certificate, but they insisted that not only was this the only expatriating act they discovered (and they did no investigation prior to advising Appellee and the Department of State), but that the mere existence of such a document was proof positive of expatriation.

Statement of Facts is less than accurate. Parsons admitted that the Terrazas case was not one of draft avoidance. Indeed, it appears affirmatively that Appellee returned to the United States for the special purpose of taking his physical examination for the American Military Draft. Further, Mrs. Fugman testified uncontrovertedly that she had a close relationship with Laurence Terrazas and he had not manifested to her any intention to give up his citizenship. Mrs. Fugman was the only disinterested, non-related person presented to testify as to young Terrazas' state of mind and demeanor.

The Government flew in witnesses from the far corners of the world to testify, but it never presented the Dean of the school in Mexico, neighbors in Mexico, employers or other persons who might have been able to contest the statements made by Appellee, Mrs. Terrazas and Mrs. Fugman. Instead, the Appellant came forth with Mr. Wyatt Johnson, who on Page 21 of his Evidence Deposition, explained the reasons for the amazing number of documents being prepared and presented in this matter, to-wit:

"Mr. Ditkowsky: Use it, Use the word he said.
Mr. Dent: Is it necessary for him. . . .
Mr. Johnson: Well he (sic.Parsons) said this is a lesson in CYA.
Mr. Ditkowsky: CYA?
Mr. Dent: Cover your ass, I think. It's a legal term."

SUMMARY OF APPELLEE'S ARGUMENT

Laurence Terrazas views his citizenship not as an abstract and esoteric concept, but as the embodiment of all the rights, privileges and immunities reserved in the People pursuant to

the United States Constitution and granted to the People under the various and sundry State Constitutions. Citizenship is the right to have rights.

The leading cases, to-wit: *Trop v. Dulles,* 356 U.S. 86; *Nishikawa v. Dulles,* 356 U.S. 129; *Kennedy v. Mendoza-Martinez,* 372 U.S. 144; and *Afroyim v. Rusk,* 387 U.S. 253, all establish the principle that an individual citizen of the United States of America (and the sovereign State of Illinois) cannot be deprived of his citizenship without *voluntarily* and *knowingly* assenting to its relinquishment. (See Brief of Appellant, PP 19 and 20.)

It is axiomatic that when one measures the *Rule of Law* of *Trop, Nishikawa, Kennedy* and *Afroyim,* the measurement must not make a sham of the Rule of Law being considered.

In Argument I, the Appellee respectfully submits that the Appellant *concedes the very issue that he appeals.* Words are tools of communication, and Laws must be understood by the people that they affect. The word "assent" used in *Afroyim* and the word "Voluntary" used in *Trop, Nishikawa, Kennedy* and *Afroyim* are clear and not ambiguous. Voluntary expatriation means *that a person remains a United States Citizen until he, of his own volition choses to no longer be a citizen.* Thus, when Appellant's witness Wesley Parsons admitted at ROP 262 that Laurence Terrazas did not know that he had given up his citizenship until he was told he had by Parsons, the essential, requisite, knowledgeable scienter was missing. The attempts by the Appellant to construe the word "assent", "intent" and "voluntary" to create *res ipsa loquitur* conception of "voluntary", if affirmed would be without substance and an unconstitutional usurpation of basic human and constitutional rights.

The unlimited power and resources of the Government

effectively overwhelm the citizens ability to defend himself. Thus, as in the instant case, when a citizen, without warning, learns from Government employees that he is no longer a citizen and is unaware of what, how or when he did something which resulted in his being declared a non-citizen, it is intolerable to allow the Government to so act using a minimal standard of proof such as the Appellant desires herein. To do so, would remove all equities which the individual citizen has left.

Argument II discusses this Court's recent decision in *Addington v. Texas,* No. 77-5992 (Apr. 30, 1979) which Appellee believes dispositive of the issue. Terrazas submits that at the very time that he was being authoritatively informed by Wesley Parsons and Maria Ibarra[3] that because he possessed a Certificate of Mexican Nationality he was no longer an American Citizen, the Appellant was urging the Court in *Matheson*[4] to refuse to recognize the avowed expatriating acts of Mrs. Burns and to determine that mere possession of a Certificate of Mexican Nationality was not expatriation.

Appellee further submits that *Kennedy v. Mendoza-Martinez,* cited supra, noted the punitive aspects of expatriation, and thus a high standard of proof must be required to protect the rights of a citizen from an inappropriate declaration that he is not a citizen. In the instant case, it is to

---

[3]The testimony adduced at Trial indicates that approximately 100 individuals were deemed expatriated by the Citizen Protection Unit, i.e. Parsons and Ibarra, as a result of their possession of Certificates of Mexican Nationality. The only substantive distinction between the *Terrazas* and *Matheson* cases is that Terrazas is a poor person and Mrs. Burns was the grandchild of Jay Gould and millions of dollars were involved in her estate.

[4]*Matheson v. United States,* 532 F.2d 809.

be noted that Parsons testified that Mexico has abolished the Oath. However, the Appellant contends that Appellee *took an Oath* and thereby expatriated himself. This contradiction is not explained by the Appellant, nor does Appellant explain the contradiction in certain documents which were produced. Two Applications for Certificate of Mexican Nationality were produced herein, one signed in blank and one bearing a signature which was not that of the Appellee. The Government does not distinguish which one of these documents resulted in Appellee's expatriation. Further, because of these contradictions, Appellant was unable to categorically state that on such and such a date the "alleged oath" took place and was unable to inform the Court as to where and when the alleged oath was taken. In point of fact, no oath had ever been taken.

Appellant's Argument III builds on the foundation laid by the Appellant Vance at BA 16, 19, and 20, and notes the relative pecuniary abilities of the parties to sustain their burdens and the relative importance of the decision herein to the instant parties. To the Appellant Vance the decision herein is of absolutely no moment, except that he will be intellectually satisfied by a judicial victory. However, to the Appellee Terrazas, the decision has grave and serious consequences. By the stroke of a pen the Appellee may become an alien in the land of his birth and the entire quality of his life can change. Ironically, the change can occur by acts which cannot be clearly articulated and possibly by the act of third persons. Young Terrazas is sentenced to a life of frustration, knowing that if were a millionaire such as Mrs. Burns in the *Matheson* case, the very Appellant herein would have moved "heaven and earth" to prevent his expatriation. Further, he realizes that if he had stayed away from Appellant's Citizen Protection Unit, his rights of

citizenship would have been protected and he too would enjoy Equal Protection of the Law and the protections of the Fourteenth Amendment.

Appellee respectfully submits that the object of the Office of the Secretary of State is to protect the citizenship rights of citizens and not to separate citizens from their citizenship. Vance may desire to expedite abrogations of citizen rights by the presumption of 8 U.S.C. 1481(c) and wish to determine who is a citizen, but such is not really his function.

The statutory presumption of Section 8 U.S.C. 1481 (c) results in massive injustice and inequity. Instead of providing a judicial aid, it over-burdens the Scales of Justice to unduly and unconstitutionally impair the ability of the citizen to defend the contentions of government. The statute, by its presumption, renders the decision of this Court in *Afroyim, Trop, Nishikawa, Kennedy* and *Addington* ineffective and just form rather than substance.

It is the contention of Appellee that *Afroyim, Trop, Nishikawa, Kennedy* and *Addington* were intended to be substantive and they and the decision of the Seventh Circuit Court of Appeals should be affirmed. Laurence Terrazas should be declared a citizen of the United States and the State of Illinois.

ARGUMENT

I.

THE APPELLANT CONCEDES THE VERY ISSUE HE APPEALS HEREIN.

In *Afroyim v. Rusk,* cited supra, the Court stated:

"The fundamental issue before this Court here . . . . is

whether Congress can consistently with the Fourteenth Amendment enact a law stripping an American of his citizenship which he has never voluntarily renounced or given up (P.760)

. . . . We reject the idea expressed in Perez that, aside from the Fourteenth Amendment Congress has any general power, express or implied, to take away an American citizen's citizenship *without his assent* . . . In our country the people are sovereign and the Government cannot sever its relationship to the people by taking away their citizenship. . . . The Constitution. . . . grants Congress no express power to strip people of their citizenship." (emphasis added)

The Appellant at BA 25 states:

"We think it evident that determination of the constitutionality of Section 1481 (c) requires this Court to decide whether expatriation requires a specific intent to surrender citizenship. . . .

. . . . If 'voluntariness' in this context means an act done with specific intent, then we would not defend the constitutionality of the presumption. . . ." (BA 26)

The words which the Appellant discusses are the words, "voluntary" and "specific intent". The Court in *Afroyim* used the word "assent" in its ruling. Words, while not having precise meanings, are intended to be tools of communication, not legalistic debates. Laws in a democratic society are intended to guide society not create artificial barriers to freedom. Certainly, the right of citizenship does not rest on the tortured and procrustean interpretation of bureaucrats, but it rests in the bosom of the Bill of Rights and the Fourteenth Amendment.

The word "assent" is defined in *The New Webster Encyclopedic Dictionary of the English Language* (1972) at P. 50, as follows:

"The act of the mind in admitting or agreeing to the truth of a proposition; consent; concurrence; acquiescence; agreement to a proposal; accord, agreement; approval."

The word "intend" (the root word for intention and intent) is defined at P. 448, as follows:

"To fix the mind upon, as the object to be effected or attained; to mean; to design; to purpose. . . .

Intent: Having the mind strained or bent on an object. . . ."

Black's Law Dictionary (Fourth Edition) at P. 947, defines "intent" as follows:

"Design, resolve or determination with which a person acts. . . . being a state of mind, is rarely susceptible of direct proof, but must ordinarily be inferred from the facts."

and at P. 1746 defines "voluntary":

"Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself. . . Done by design or intention, purpose, intended."

Finally, *The New Webster,* Ibid. at P. 941, defines "voluntary":

"Proceeding from the will; done of one's own accord or free choice. . . ."

The use of these words in their common meanings as understood by the common man, should not be a problem for the Appellant to understand. They are commonly understood to mean that a "voluntary" act is an "intended" act. A negligent act is not voluntary, nor is a careless act or a reflex voluntary. Applied to the instant case, the Seventh Circuit Court of Appeals was indeed correct in determining that an individual could not be deemed to have assented to giving up his citizenship if he did not consciously know that he had in

fact, and in law, given it up.

As a practical matter, the United States of America is an extremely complex society. Its language, English, is not precise, but the needless torture put to its meaning in the Appellant's Brief is unnecessary, except as to attempt to create distinctions without a difference, for "confusion value". Appellant seems to believe that when there is nothing substantive to say, it is best to try and confuse the facts and the law. The common man is familiar with basic language and therefore the subtleties which Appellant promulgates and with which he struggles to distinguish between the words "specific intent" and "voluntariness" are lacking in relevance. Appellant never even mentions the word "assent" in his Brief, although the term "assent" as used in *Afroyim* is clearly defined and simple in its usage. It is understood to mean that a citizen may continue to be a citizen for as long as he personally so desires to be one. The Congress is without power to involuntarily expatriate. Under Afroyim, *Congress,* by direction or indirection, cannot expatriate a citizen without his assent.

It is submitted that the word "assent" as used in *Afroyim* is identical to the term, *"specific intent"* as used by the Appellant and the statements made by the Appellant on PP 25 and 26 of his Brief are therefore akin to a confession of error on the part of the Appellant.

II.

THE DECISION OF THIS SEVENTH CIRCUIT COURT OF APPEALS "REPRESENTS A COMMENDABLE JUDICIAL EFFORT TO AVOID THE HUMAN INDIGNITY THAT RESULTS WHEN CITIZENSHIP, THE MOST PRECIOUS RIGHT, IS INVOLUNTARILY AND UNJUSTLY DIVESTED". *(Virginia Journal of International Law,* Vol. 19:1, P 129.)

President James Carter has declared to the world that this Nation is dedicated to the preservation of human as well as legal rights. The Appellant herein, Cyrus Vance, is not consistent with the public statements of his mentor, and in point of fact, the Brief filed herein appears to urge this Court to over-rule *Kennedy, Addington, Afroyim, Trop* and *Nishikawa,* and ignore the Government's arguments advanced in *Matheson v. United States,* 532 F.2d 809.

Even a lawsuit that reaches the intellectual sphere of the Supreme Court of the United States involves a case and a controversey and the rights and futures of real, live people lie in the balance. In such cases, the interests of the parties are measured by an abstract concept referred to as the "standard of proof". Phrases such as "preponderance of the evidence", "beyond a reasonable doubt", "clear, convincing and unequivocal", denote the realm of fact finding necessary to measure the standard of proof. Unfortunately, the fact finder does not decide the issues in a vacuum, and when a young lad is stripped of his citizenship for allegedly taking an oath of allegiance to Mexico (which Nation has abolished the oath), all the legalistic rationalizations just do not make the actions of the United States Government proper and right.

The Appellant herein desires to re-argue *Perez*[5a] and *Afroyim,* but fails to explain how in *Matheson* it presented the very argument it now, in its 80 page Brief herein, fails to acknowledge. Citizenship is not a badge such as the Yellow Stars of David worn by Jews under the yoke of Nazism so the government could tell who they were. Free democratic government is interested in *due process* for all persons within its jurisdiction, not a head count, or expeditious, involuntary denaturalization of its subjects. We are a Nation of immigrants and most of us have ancestors who fled tyrants and oppressors. It would be ironic if in the latter part of the Twentieth Century, young citizens such as Laurence Terrazas could lose their most precious right, i.e., citizenship, without being aware of having done so.[5]

The "Bible" of the Foreign Service Officer is the Foreign Affairs Manual (FAM) and the expressed position therein contradicts the representations made by Appellant Vance herein. At 8 FAM 224.10a it states:

> "Rights and privileges of nationality in the United States are to most persons their most valuable assets and should not be taken away from them except upon clear and convincing evidence. . . . 'Rights of Citizenship are not to be destroyed by ambiguity'."

At 8 FAM 284, Attorney General Clark states:

> "Under any reading of *Afroyim* . . . . it is clear that an act which does not reasonably manifest an individual's transfer or abandonment of allegiance to the United

[5a] *Perez v. Brownell,* 356 U.S. 44.

[5] Wesley Parsons, the Consular Official charged with protection of citizens in Monterey, Mexico, testified at ROP 262:

> "Q. And he didn't know that he had allegedly expatriated himself until you told him that he had, isn't that correct?
>
> A. That is true."

States cannot be made a basis for expatriation."

The quoted statements from the Foreign Affairs Manual as well as the arguments of the United States Government in *Matheson*, ARE BINDING and dispositive of the issue presented herein. It would be a denial of equal protection of the law to purport and apply a clear and convincing standard to some individuals and not to young Terrazas.

A. THIS COURT HAS RECOGNIZED IN ITS DECISION IN *ADDINGTON V. TEXAS* (cited supra) THAT DUE PROCESS REQUIRED THE GOVERNMENT TO MEET THE STANDARD OF PROOF OF CLEAR, CONVINCING AND UNEQUIVOCAL.

It is submitted that *Matheson* and *Addington* are essentially on all fours with the instant case. *Matheson* involved a relative of Jay Gould and his millions. The document signed by Mrs. Burns therein was not rationally distinguishable from one of the documents which was presented herein to induce the issuance of the Certificate of Mexican Nationality. Appellee still maintains that the forged Application for Certificate (Exhibit 32) just as probably promulgated the Certificate of Mexican Nationality as the document signed in blank.

In *Matheson*, taxation of the estate was at issue and the United States Government did not consult Maria Ibarra, Wesley Parsons or the Citizen Protection Unit to ascertain if Mrs. Burns had expatriated hersef. The mere possession of a Certificate was not determinative, and with thousands of dollars of tax money at stake, it was argued that Mrs. Burns did not intend to expatriate herself and give up her United States Citizenship.

In *Addington*, the Court faced the problem of the civil commitment of a youth to a State Mental Hospital. Mr. Justice Burger stated the issue:

> "The question in this case is what standard of proof is required by the Fourteenth Amendment to the Constitution in a civil proceeding brought under state law to commit an individual involuntarily for an indefinite time to a state mental hospital.
>
> The function of a standard of proof, as that concept is embodied in the Due Process Clause and in the realm of fact finding is to instruct the fact finder concerning the degree of confidence our society thinks he should have in the correctness of the factual conclusions for a particular type of adjudication. In re *Winship*, 397 US 358, 379 (1970). The standard serves to allocate the risk of error between the litigants and to indicate the relative importance attached to the ultimate decision."

Mr. Justice Burger analyzes the various standards, as applied to various types of matters, and then states:

> "Similarly, this Court has used the 'clear, unequivocal and convincing standard to protect particularly important individual interests in various civil cases. See e.g., *Woodby v. INS*, 385 U.S. 285 (deportation); *Chaunt v. United States*, 364 U.S. 350, 353 (1960) (denaturalization); *Schneiderman v. United States*, 320 U.S. 118, 125, 159 (1943) (denaturalization). . . . In cases involving individual rights, whether criminal or civil, 'the standard of proof at a minimum reflects the value society places on individual liberty.' "

It is clear that in the United States of America, citizenship and individual liberty are closely related and cherished. To deny Laurence Terrazas his citizenship is to deny him his greatest and most treasured asset. The denaturalization of a citizen is of greater consequence than internment in a Texas mental hospital.

B. DENATURALIZATION OR EXPATRIATION IS A DEVASTATING PUNISHMENT, VIOLATIVE OF THE FIFTH, EIGHTH AND FOURTEENTH AMENDMENTS TO THE FEDERAL CONSTITUTION.

Mr. Justice John Marshall in *Marbury v. Madison,* Cranch 137, promulgated the Credo of American Law when he asked the question, if a citizen was wronged, did he have a remedy?

> "If he has a right and that right has been violated, do the laws of this Country afford him a remedy?
>
> The Government of the United States has been emphatically termed a Government of laws and not of men. It will certainly cease to deserve this high appellation if the laws furnish no remedy for the violation of a vested legal right."

Our Republic is unique, not only because we as a Nation opened our doors to the multitudes of victims of famine and oppression, but because our laws are based upon Divine Convenants, as we as a Nation seek not formal compliance with procrustean rules and regulations, but *substantive justice.* We are not bound by the rigors of the English Common Law and its forms of action, but instead are bound by a more basic concept, the concept of right and wrong.

In *Kennedy v. Mendoza-Martinez,* cited supra, Mr. Justice Goldberg, in writing for the Court, noted the punishment aspects of *involuntary expatriation:*

> "The punitive nature of the sanction here (P.168) is evident under the tests traditionally applied to determine whether an Act of Congress is penal or regulatory in character. . . . Whether the sanction involves an affirmative disability or restraint, whether it has historically been regarded as punishment, whether it comes into play only on a finding of scienter, whether its operation will promote the traditional aims of punishment - retribution and deterrence, whether the behavior to which it applies is already a crime, whether an alternative purpose to which it may rationally be connected is assignable for it, and whether it appears excessive in relation to the alternative purpose assigned, are all relevant to the inquiry and may often point in different directions. Absent conclusive evidence of congressional intent as to the penal nature of a statute, these factors must be considered in relation to the statute on its face."

The Court then found that expatriation was *punitive* in nature and rejected arguments such as presented by the Appellant herein, as violative of the Fifth and Sixth Amendments to the Federal Constitution.

The instant case should be more easily determined than its predecessors as it discusses not the survival of the Republic, but the intrusion of Government into the life of a youngster to confuse him as to his citizenship and then document a fact which everyone knows not to be a fact. More specifically, Appellee focuses upon the following facts:

1. Mexico has abolished the Oath, and thus it was impossible for Laurence Terrazas to take an oath.[6]

2. The record contains no testimony that on such and such a day, at such and such a place, Laurence Terrazas appeared

[6]It is elementary that in abrogating his citizenship, fundamental due process and morality would require an accurate statement of what Terrazas did, when he did it, how he did it, where he did it and who was present. Yet a search of the record will reveal Appellant and his servants Wesley Parsons and Mexican National Maria Ibarra, were not in the least concerned about ascertaining facts. Parsons was interested in documenting the case and according to Johnson's sworn deposition, to "CYA".

in the presence of some person or persons, raised his hand and stated words of allegiance to a foreign sovereign.

3. The records contain no testimony that Laurence Terrazas did any act inconsistent with his United States Citizenship. It must be remembered that in 1970 and 1971, when young Terrazas was a temporary resident in Mexico, he was a dual citizen. Mr. Afroyim apparently acquired Israeli citizenship in 1950, a year before he voted in the Knesset election, and in fact emigrated to Israel from the United States. Terrazas acquired his dual citizenship upon birth, and having evidence of the same was not inconsistent with his United States citizenship.

4. The record fails to distinguish between the two Applications for Certificate of Mexican Nationality produced by the Government of Mexico. Exhibit 32 bears a signature which was admitted not to be that of Terrazas, and there is no evidence that it was not the proximate cause of the Certificate being issued.

5. The Appellant failed to prove any details of the alleged expatriating act; and Wesley Parsons, when he made his recommendation to issue a Certificate of Loss of Nationality, never investigated to determine what, if anything, Appellee did. He made an unwarranted assumption and since 1971 the *modus operandi* of the Appellant has been to obfuscate the issue rather than address it. Terrazas was documented out of his citizenship when he stupidly believed the Appellant's agent who told him that by possession of the Certificate of Mexican Nationality he had committed an overt act of treason and could not go home. In desperation he did what Parsons and Ibarra requested and he became another "scalp" on the belt of the Citizen Protection Unit of the United States Consulate. (According to the testimony of Ibarra at ROP 373, 100 other Americans who had obtained

such Certificates had been deemed expatriated.) Ironically, the Government of the United States was, at the same time, arguing to the Courts of the United States that possession of a Certificate was interesting but not denaturalizing for Mrs. Burns in the *Matheson* case.

6. Mrs. Fugman, the only disinterested witness testified uncontrovertedly at ROP 477 relative to her observations of Mr. Terrazas during the time period in which the events in question were occurring, and stated:

"A. Yes, I saw him before he went back to school and then I saw him when he came home. I asked him what he was doing back so soon, and he said, 'I had to come home for my physical. . . .' Like I said, I asked him why he was in and he said that he had come in for his physical and I thought it was a shame, because it was poor timing and it was costly for him to make the trip and by plane. . . .

Q. Would you describe the relationship the Plaintiff (sic. Appellee herein) had with his parents?

A. Very close. He was a very obedient child for a young man, more so than other young people I know today. . . . He was quite upset when his father died.

Q. And did he take over responsibility when his father died?

A. Yes.

Q. Did you have any conversations about his living in Mexico permanently?

A. He never mentioned living there permanently, just that he was going to school there. He never mentioned intentionally that he was going to stay there, ever. *In fact, he seemed like he couldn't wait until he was*

finished to get home. (emphasis added)

THE COURT: Did he tell you about one (sic. girl) that he was going to marry?

A. Not in Mexico, no, not seriously until Carmen, his present wife came along. . . .

I was very much surprised when all this happened. I was taken aback, really. I think Larry mentioned it to me himself in 1972 when the damage was already done, I mean, and he was very much upset about it. And I said, 'What's the matter', and he was just broken up, and he could hardly talk to me, but I finally was able to get to him and have him tell me what was wrong."

7. Mrs. Terrazas (Appellee's mother) testified uncontrovertedly at ROP 490 as to the execution of a document relied upon by the Appellant Vance:

"Well he (sic. Appellee's father) told Larry to sign the bottom, to sign his signature and he said 'We'll send it on to my brother', Jorge, Carlos' brother Jorge. And he said, 'Jorge will see that it is filled in the proper way. I'm not really sure how it should be filled in. And either Jorge will do it or he will get someone to do it for him to help him do it.'

A. And did your son sign the document?

A. Yes.

Q. And did he sign it when there was still blank spaces on it?

A. Right."

8. Parsons admitted that Terrazas was not only surprised when he was told he had expatriated himself, but did not know that he had expatriated himself until informed of it by Parsons. *In point of fact, Terrazas did not expatriate himself and is a citizen of the United States who has been improperly and illegally denaturalized.*

The application of the standard of proof suggested by the Appellant is reflected in the decisions of the District Court, the Department of State, the Passport Office and the bureaucrats who are governed by the high sounding statements of the Foreign Affairs Manual. All were unanimous in determining that the assertion that Terrazas had taken an oath, even though Mexico does not recognize the oath, was proof, by a preponderance, that an oath was taken. This assertion was so persuasive that everyone blithely attributed dates to such oath taking which ranged from April, 1971 through August, 1971, even though the documents presented reflected 1970 dates, and it is uncontested that one document presented by the Appellant was signed in blank and the other was signed by a third person. It is sugested that the practical application of the standard of proof urged by the Appellant is patently unconstitutional. For if the standard of proof which he suggests is correct, it is possible that Appellant himself could be deemed expatriated without his knowledge and consent under similar circumstances. In essence, the "standard" desired by Appellant causes a formal forfeiture in derogation of the basic principle of *due process,* but with strict adherence to the principle of always giving the accused a fair trial before finding him guilty as charged, and executing the sentence upon him.

III.

CONGRESS IS WITHOUT POWER TO TAKE AWAY THE CITIZENSHIP OF A CITIZEN.

The Appellant Vance, in his Brief (BA 16) states:

". . . . it has long been recognized in this country that the right of expatriation is a natural and inherent right of all people. . . ."

(BA 19)". . . . It has . . . . been agreed that no act can be expatriating unless it is done voluntarily, that is, knowingly and not under duress."

(BA 20)". . . . this Court decided in *Afroyim vs. Rusk* 387 WS 253, that the Fourteenth Amendment defined a citizenship that Congress had no power either under that amendment or any other provision of the Constitution to take away. That is, a person born or naturalized in this country is a citizen. . . .and. . . .cannot lose his citizenship unless he 'voluntarily relinquishes' it."

As demonstrated by *Addington* and the previous arguments of the Appellee, the Standard of Proof required to prove a particular fact may very well be determinative of the conclusion that will be reached by the trier of fact. In the instant cause, such is particularly significant since the Appellant Vance has at his disposal a significant array of legal talent, while the Appellee Terrazas has available to him only his present counsel. Legal technicians, specialists, investigators and an impressive array of attorneys are available to Vance at a moment's notice. Witnesses such as Parsons (now in the Orient) and Johnson (in the Middle East) are available to be flown in at will and the dollars to be spent are unlimited. Terrazas is proceeding herein as a Poor Man. He will never earn enough money in a lifetime to pay for food to feed his infant child and to pay other family expenses and have enough money to pay reasonable attorney's fees. From a practical stand-point, the parties are not even close to being equal in their abilities to present their cause. *It is submitted that the term, "equal protection of the law" becomes a sham when the burdens of proof are placed on the person least able to meet it,* and the litigant with unlimited resources is even granted a punitive presumption to aid his

cause.[7]

Finally, to assure that the Govermment is successful in denaturalizing a citizen, the citizen litigant is brought to a virtual state of desperation when he realizes that unless he is able to overcome the combined factors of pecuniary stress and legal burdens, he will lose everything that his ancestors fought for, sacrificed for, and even died for.

To weigh this onerous and burdensome situation against the rationale of the Appellant Vance (See P.50 of his Brief) that Terrazas must be denied his citizenship because the Government would not otherwise know who is a citizen and who is not, is patently absurd and not in accord with any Constitutional view of "equal protection of the law".

The concern of the laws of the United States is properly focused on the right of the individual under the Fourteenth Amendment and the Bill of Rights. *In the United States,*

[7]The Appellant's argument herein, stripped to the bare bones, urges this Court to adopt the proposition that if Congress should deem that "wearing a red shirt" is expatriative, then a presumption of law would arrive that the wearing of this red shirt was done voluntarily with the intention (specific or otherwise or scienter) to expatriate oneself. The Appellant asks this Court to ignore the requirement that the scienter bear a relationship to the act done and the consequences which are to be assessed as a result of the act. In the instant case, the act done was the receipt and possession of a Certificate of Mexican Nationality, which Certificate was necessary to obtain a degree. The *res ipsa loquitur* approach in matters so important as citizenship clearly contravenes the Fourteenth Amendment. Even forseeability is a required area of negligence. No reasonable man would assume that proof of dual citizenship (a right vested under the Fourteenth Amendment) would cause him to lose his United States Citizenship. At the very best, the action of Terrazas herein could be deemed a mistake of law or a mistake of fact. The words, "mistake" and "intent" (scienter) are not synonymous. If every individual who made a mistake were to be presumed to have lost his United States Citizenship, there would be no United States Citizens.

Government exists for the benefit of the citizen, the citizen does not exist for the benefit of the Government.[8]

Citizenship is casually stated to be a "most precious right". Appellee suggests an analogy to demonstrate what citizenship is. If each right reserved by the Federal Constitution and granted by the State Constitution or the Common Law were a "stick", the bundle made up of all those sticks would be United States Citizenship. Thus, the right to remain silent, the right to an attorney, the right to be free from *ex post facto* laws, the right to vote, the right to trial, the right to travel from State to State, etc., are all sticks in the "bundle" of United States Citizenship.

It is submitted that the criteria for the renunciation of one

[8]In no event can Appellee fail to comment upon the statement of Vance on P. 55 of his Brief:

> "Appellee's formal declaration of allegiance to Mexico fits all of the above qualifications as an expatriating act. It is designated by statute. 8 U.S.C. 1481 (a)(2). It was voluntarily done, as Appellee freely admits."

This statement, to be charitable, is at least inaccurate and not to be charitable, is a gross misrepresentation of objective reality. Appellee does not admit to voluntarily taking an oath and in point of fact, it is his uncontroverted testimony and that of other witnesses that he took no oath; that the country of Mexico has no oath; and what Appellee did, was to sign a piece of paper with some writing on it with blanks to be filled in. The Appellant, in making his statement on P. 55 knows that there were two Applications for Certificate of Mexican Nationality, one of which bore a forged signature, the other was signed in blank. With Appellant's conception of what constitutes voluntary expatriation, if John Doe were to sign the name "Cyrus Vance" and make Application for Certificate of Mexican Nationality, Cyrus Vance would, according to the testimony of Wesley Parsons, be deemed by the Department of State to have made an oath of allegiance to Mexico in spite of the fact that no oath is recognized in Mexico. It might, however, be possible that Mr. Vance might receive the same consideration that Mrs. Burns received in the *Matheson* case, and thus equality before the law would again be obviated.

"stick" in the bundle is greater than the criteria that the Appellant suggests for giving up the entire bundle.

The parties and the commentators refer to four cases as being the leading cases in the area of denaturalization and the standard of proof for expatriation. They are: *Trop v. Dulles, Nishikawa v. Dulles, Kennedy v. Mendoza-Martinez* and *Afroyim v. Rusk.* Recently this Court has considered the same proof issue in connection with *Addington v. Texas.*

In *Trop v. Dulles,* the question of whether or not wartime desertion would create expatriation was discussed. Trop, was a Private. He escaped from the stockade and was convicted as a war-time deserter, though his desertion was relatively short. The Court pointed out (2L.Ed.2d 630, 78 S.Ct.590) in over-turning Trop's denaturalization:

> "Citizenship is not a license that expires upon misbehavior. The duties of citizenship are numerous, and the discharge of many of these obligations is essential to the security and well-being of the Nation. The citizen who fails to pay his taxes or to abide by the laws safeguarding the integrity of elections deals a dangerous blow to his country. But could a citizen be deprived of his nationality for evading these basic responsibilities of citizenship?....As long as a person does not *voluntarily renounce or abandon his citizenship* .... I believe his fundamental right of citizenship is secure." (emphasis added)

The *Nishikawa* case involved an American of Japanese descent who, in 1939, traveled to Japan and went to work in an aircraft plant at $15 per month. He was unable to accumulate any savings and by virtue of his Japanese Citizenship (dual nationality), he was required to take a physical examination and be inducted into the Japanese Army. *Mr. Nishikawa testified that he was told by a friend who worked at the American Embassy that the American*

Consulate could not aid a dual national. Nishikawa served in the Japanese Air Force and when the war was over asked the State Department to recognize his United States Citizenship. He was not afforded that right. In Court proceedings, the Court in over-ruling the State Department stated:

> "On this record the Government has not established the voluntary conduct that is the essential ingredient of expatriation." (2 L.Ed 2d 666)

In *Kennedy v. Mendoza-Martinez,* two cases are discussed. Mendoza-Martinez admitted he left the United States to avoid the draft. He was convicted of draft-evasion and went to jail. Cort was a communist. He went to England and then on to Prague, Czechoslovakia. Cort's application for a Passport was denied on the grounds that he had failed to report for induction as ordered and remained outside the United States. That therefore he had automatically forfeited his United States Citizenship.

The Court determined that the forfeiture of United States Citizenship was clearly a penalty and that it could not countenance the forfeiture of citizenship in these cases. Therein the Court stated: (P. 184)

> "It is argued that our holding today will have the unfortunate result of immunizing the draft invader who has left the United States from having to suffer any sanction against his conduct, since he must return to this country before he can be apprehended and tried for his crime. The compelling answer to this is that the Bill of rights which we guard so jealously and the procedures it guarantees are not to be abrogated merely because a guilty man may escape prosecution or for any other *expedient reason.*" (emphasis added)

The Court reiterated at P. 186:

> "Dating back to Magna Carta, however, it has been an abiding principle governing the lives of civilized men that 'no freeman shall be taken or imprisoned or disseised or outlawed or exiled. . . . without the judgment of his peers or by the law of the land. . . .' "

The foregoing cases are not idle gossip, but the considered opinions of the Supreme Court reflecting on the very argument presented by the Appellant. They explain in detail what constitutes a voluntary act. They explain the constitutional need for substantive due process and the standard of proof of clear, convincing and unequivocal.

From a practical aspect, all Court cases are decided on their own facts within precedent guidelines. The Government advances in its Jurisdictional Statement and its Brief, two specific reasons for reversing the Court of Appeals, to-wit: 1) The need to count heads and know who is a citizen and who is not; and 2) If it does not have a simple proof to meet, it will not be able to expatriate anyone.

Mr. Vance in his Brief, improvidently attempts to paint Appellee Terrazas with the brush of draft evader. However, his witness Wesley Parsons, admitted that this was not a draft-evasion case and the record is replete with examples of Mr. Terrazas' compliance with the American draft law. Mrs. Fugman uncontrovertedly placed in the record that Mr. Terrazas came back to Niles, Illinois from Mexico to take his Army physical and *there is nothing in the record which shows an abandonment of his citizenship or of his obligation to the United States.* The innuendo and unsubstantiated statement by Appellant that Appellee wished to marry a Mexican girl is refuted by the testimony of Mrs. Fugman as well as the fact that he married a United States Citizen.[9]

[9]It has come to the Appellee's attention that the Consulate Officer is reputedly to have married a Mexican National. If the same is true, has he expatriated himself? Obviously not.

The Appellee respectfully submits that the Fifth, Sixth and Fourteenth Amendments to the Federal Constitution dictate that Congress cannot do by indirection what it cannot do by direction. Similarly, Congress cannot create a presumption that anyone "wearing a red shirt" has to be deemed to have voluntarily taken an oath of allegiance to a foreign sovereign.

Historically, we Americans were first citizens of the "State". Appellee Terrazas is a citizen of the State of Illinois. His Illinois Citizenship gives him the right to vote in Illinois elections, the right to the privileges and immunities of the Illinois Constitution. Under the Fourteenth Amendment, Appellee Terrazas became a citizen of the United States of America. This Federal citizenship initially gave him the protection, privileges and immunities of the most powerful nation on earth. The Fourteenth Amendment citizenship gave an individual rights of citizenship which we have referred to herein as a "bundle of sticks". Pursuant to the United States Constitution, each of the States is itself a sovereign entity and it covers all its citizens' particular rights, privileges and immunities. The dual citizenship envisioned by the relationship of the State of Illinois and the Government of the United States of America, represents a formidable asset, more valuable than a lump of gold, to be protected by the due process clause of the Fifth and Fourteenth Amendments.

The Appellee contends that Congress is without power to create a presumption or a standard of proof which could cause a citizen to lose his citizenship by proxy, by negligence, by a careless mistake or as punishment for even the most heinous crime, *without due process* entering the picture. The Appellee relies upon *Addington* and suggests that the recent Court decision therein is determinative of the issues herein.

If the equities are balanced, the loss of an individual's citizenship is the most devastating loss an individual can suffer, short of loss of life itself. Yet to the Appellant herein, the loss of citizenship of one of the 200,000,000 Americans means only that there would remain 199,999,999 other Americans to govern. Society in general, however, is appalled and disheartened by the deprivation of human and constitutional rights to a fellow citizen. The interest of society in a democratic country requires the Government to leave no stone unturned to protect the rights of its members. For the value of the democratic process as it pertains to one person within its jurisdiction, is the value of the democratic process as it pertains to all the people.

CONCLUSION

For the reasons proposed herein, Laurence Terrazas request that this Honorable Court restore to him his United States Citizenship and affirm the decision of the United States Court of Appeals for the Seventh Circuit that 8 U.S.C. 1181 (c) is unconstitutional. That further, this Court establish a Rule that prior to an individual losing his United States Citizenship, the person asserting that loss of citizenship must prove the following:

1. The act which promulgates the loss, i.e., expatriation and/or renunciation;
2. The date, time, place and who was present when the event occurred;
3. Scienter to expatriate or renounce, i.e. assent, intent;
4. That the action of the expatriate or renunciator is clearly inconsistent with his continuing to be a United States Citizen;

5. That the standard of proof to be presented on each of the elements must be clear, convincing and unequivocal, declaring further that this burden is an affirmative burden and not a burden which can be sustained by default, incompetence of counsel or some other deficiency in the advocate system. We must all establish that when we deal with the totality of rights, the waiver of this totality must have greater moment and greater solemnity than the waiver of any single right.

Respectfully Submitted,

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FOR ARGUMENT

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No. 78-1143

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v.

LAURENCE J. TERRAZAS

ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE APPELLANT

WADE H. McCREE, JR.
Solicitor General
Department of Justice
Washington, D.C. 20530

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ON APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

REPLY BRIEF FOR THE APPELLANT

1. Appellee repeatedly insists that "Mexico has abolished the Oath, and thus it was impossible for [appellee] to take an oath" (Br. 19; footnote omitted; see also Br. 3, 8-9, 23). Although appellee does not explain the basis for this contention, his position appears to be that, because Mexico has eliminated any requirement that a prospective citizen's declaration of allegiance be made to God, there could be no "oath" at all.

The district court squarely rejected this meritless contention (J.S. App. 22a; emphasis added): "[F]rom the uncontroverted evidence presented by [appellant], Mexican law does not require an appeal to God as part of the operative language of an oath. (Tr. 237; Def. Ex. No. 29). And while the *oath* of allegiance, per se, has been abolished in Mexico, the *declaration* of allegiance contained in the Application [for a Certificate of Mexican Nationality] and the Certificate [of Mexican Nationality] serves as the equivalent of an oath under Mexican law."

Furthermore, 8 U.S.C. 1481(a) provides that an American citizen "shall lose his nationality by * * * taking an oath *or making an affirmation or other formal declaration of allegiance* to a foreign state or a political subdivision thereof * * *" (emphasis added). See our principal brief at 55-56. Thus, the fact that Mexican law does not require an appeal to God has no bearing on this case, and it matters not whether appellee's act is termed an "oath," a "declaration" or an "affirmation." What matters is that he proclaimed, with appropriate formalities and in a recognized procedure, his allegiance to Mexico.

2. Appellee renews his contentions that, in acting as he did, he "foolishly relied upon [the] expertise" of American consular officials (Br. 4), "was not properly informed of the procedures" (Br. 5), was misled as to the consequences of his actions (*ibid.*), and "stupidly believed" the American vice-consul (Br. 20). The district court, in a finding that the court of appeals did not disturb, set these contentions to rest:

> Much of [appellee's] challenge to the Certificate of Loss of United States Nationality issued by the Department of State rests upon his assertion that he was misled by members of the United States [Consular] Office with whom he dealt. This Court has heard the testimony of [appellee] as well as that of the [Consular] officers and finds that based upon the testimony of record [appellee's] contentions are without merit.

J.S. App. 27a (citations to record omitted).

3. Appellee alleges (Br. 3) that Defendant's Exhibit 32, an application for a Certificate of Mexican Nationality, does not bear his signature and that Wesley Parsons, the American consular officer, so testified. This was not Parsons' testimony. He testified (Tr. 236) that "I don't know whose signature is on [Defendant's Exhibit 32]. I have no way of knowing."

In any event, even assuming that the signature on Defendant's Exhibit 32 is not appellee's, the fact remains that appellee concededly (Tr. 556; Br. 3) did sign Defendant's Exhibit 8 (A. 5a-6a), also an application for a Certificate of Mexican Nationality, dated November 16, 1970. It was *this* application that was submitted to the Mexican government and that resulted in the issuance of a Certificate of Mexican Nationality, as the courts below found (J.S. App. 3a, 4a, 32a-34a). Thus, appellee's assertion (Br. 3, 20) that there was no evidence that Defendant's Exhibit 8, rather than Defendant's Exhibit 32, was the basis for the Certificate of Mexican Nationality is simply incorrect.[1]

4. As the foregoing discussion illustrates, much of appellee's brief is devoted to an attempt to relitigate factual matters that were resolved against appellee by the district court and that were not disturbed by the court of appeals.[2] It bears repeating at this point that the district court found, by a preponderance of the evidence (see 8

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[1]Appellee calls attention (Br. 3) to an evident typographical error in the district court's opinion, which states that appellee took the oath of allegiance to Mexico on "August 3, 1971" (J.S. App. 19a). That this error is merely typographical, and that the correct date is April 3, 1971, is demonstrated by the district court's finding of fact (J.S. App. 28a) that a Certificate of Mexican Nationality was issued to appellee on April 3, 1971. As the district court found (*ibid.*), under Mexican law the oath of allegiance is effective upon issuance of the certificate of nationality, *i.e.*, April 3, 1971. See J.S. App. 21a; Appellant's Br. 5 n.3. Appellee does not dispute this finding. (With some embarrassment, we note that there is a related typographical error at page 5 of our principal brief. The date "April 13, 1971" at the top of the page should read "April 3, 1971." See A. 8a.)

[2]We have not attempted to address every question of conflicting testimony that appellee has raised. With the exception of those we discuss at pages 1-2, *supra*, we believe they are inconsequential on their face.

U.S.C. 1481(c)), that appellee knowingly and voluntarily took an oath of allegiance to Mexico (Findings of Fact 2 and 9, J.S. App. 28a-29a) and that, in doing so, he knowingly and voluntarily renounced allegiance to the United States (Findings of Fact 3 and 9, J.S. App. 28a-29a). The court of appeals stated, in this regard, that "[a]ssuming that the proper standards [of proof] were applied, we are convinced that the record fully supports the [district] court's findings" (J.S. App. 8a). The court of appeals concluded that a higher standard of proof was required, but it did not attempt to resolve the factual disputes under that higher standard. It remanded the case to the district court for such review (J.S. App. 15a-16a).

If, as we believe, the court of appeals erred, its judgment should be reversed and that of the district court reinstated. If, on the other hand, the court of appeals was correct, its judgment should be affirmed; the district court, on remand, can then evaluate the evidence, including the "crucial factor" of credibility (J.S. App. 15a), under the higher standard of proof. In either event, there is no reason for this Court to accept appellee's implicit invitation to reach out now and resolve disputed factual matters.

By the same token, appellee contends (Br. 1-3) that he submitted an application for a Certificate of Mexican Nationality in order to meet graduation requirements of the Mexican school he was attending. Both courts below pointed out that the evidence also could support the conclusion that appellee acted as he did in order to avoid the military draft in the United States (J.S. App. 26a, 5a n.5), but the courts properly concluded that it was unnecessary to decide the motive for appellee's actions. The only material factual determination, in our view, is whether appellee's conduct constitutes a knowing act of expatriation. If it does, then the question whether that

conduct was motivated by a desire to graduate, a desire to avoid the draft, or some other desire, is irrelevant. In any event, if this Court concludes that expatriation requires proof of a specific intent to relinquish citizenship, the factual determination whether appellee had such intent should be decided in the first instance in the district court, which can, in making that decision, place whatever weight it thinks appropriate on evidence of appellee's motive.

For the foregoing reasons and the reasons stated in our principal brief, it is respectfully submitted that the judgment of the court of appeals should be reversed.

WADE H. MCCREE, JR.
Solicitor General

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